(S.B. 1427)
(Conference)

(No. 233)

(Approved August 13, 1999)

AN ACT

To add a new second paragraph to Article 107; amend clauses (a) and (b) of subsection (8) and to add a paragraph (l) to subsection 8 of Article 166A of the "Civil Code of Puerto Rico" in order to consider the prior history of conduct involving domestic violence when granting the custody of children following a divorce or in any controversy regarding the awarding of custody; establish the discretion of the Court to hear the testimony of the child in determinations of custody and “patria potestas”; add as a cause for the termination or suspension of “patria potestas” when said person has a prior history of conduct involving domestic violence.

STATEMENT OF MOTIVES

In view of the social problems faced by the Puerto Rican society, the family, as a social institution, has been recognized as a high priority area that must be dealt with in an integral manner. In an analysis entitled *Estudio sobre las Necesidades Sociales en Puerto Rico* published by United Funds of Puerto Rico in January 1997, children, adolescents, women and the elderly are the population groups identified as of highest risk given the extent of the social problems connected to them. Among problems associated to families that constitute a grave concern for our people, are the disintegration of families and the abuse of women and children.

It is evident that within the various modalities of abuse, domestic violence is one of the most serious and complex problems faced by families

in modern society. The manifestations of this type of antisocial behavior can be of a verbal, emotional, sexual and physical nature. The scientific studies conducted by P. G. Jaffett, D. Wolfe and S. Wilson in *Children of Battered Women*, have shown that domestic violence is characterized by the presence of certain traits within the family, such as deficient or inexistent communication channels, excessive discipline without grounds to justify it, threats, armed or unarmed aggression, and in the worst-case scenario, the death of the victim. In fact, this problem is a serious risk to the physical and emotional integrity and to the lives of the victims thereof, which could even include the children that constitute the family nucleus.

In a report published by the Women's Affair's Commission on the profile of domestic violence in Puerto Rico, it shows that during the period from January to December, 1996, 19,132 cases of domestic violence were reported in our Island. Of these, 17,225 or 90.03% were against women and 1,907 o 9.97% were against men. It also shows that most of the cases of domestic violence occurred in the victim's home, for a total of 15,544 or 81.3%.

It has been recognized that there is a correlation between domestic violence, child abuse and juvenile delinquency. In a study conducted by the Boston City Hospital in 1988, it was found that in 60% of the cases of child abuse, the mother was also the victim of domestic violence. Another study carried out in 1985 by the Massachusetts Youth Services Department, revealed that children who have been exposed to child abuse in their homes have a greater tendency towards suicide, and alcohol and drug addiction. In the light of these findings, it can be concluded that an environment of domestic violence causes serious harm to the children.

In our code of laws, child abuse is defined in Act No. 75 of May 28, 1980, as amended, known as the "Child Protection Act". It establishes that abuse is any act or voluntary omission by the person in charge of the minor that affects the physical, mental or emotional development of the latter. The term abuse is broad and its scope covers abuse as well as negligence. Negligence refers to the omission by the parents or guardians to satisfy the physical and/or emotional needs of the minors, even when they have the means to do so. Emotional abuse refers to the harm caused to the emotional or intellectual capacity of minors through words and actions. This type of abuse is much more difficult to detect since it does not leave visible scars. However, a minor that is exposed to it can present signs of insecurity, acute shyness and aggressiveness, since there is a continuous deterioration of his/her self-esteem. The children of violent families suffer a series of difficulties and needs that are the result of living within a dysfunctional family. This type of abuse leaves no physical scars and, as a result, the impact of violence suffered by minors could be unnoticeable to others. Therefore, it is of vital importance that in those cases in which a determination of “patria potestas” or custody is required, the problems involving domestic violence, its effects and manifestations on the adults, as well as on the children that are part of that family be taken into consideration.

On the other hand, Act No. 100 of June 2, 1976, amended Article 107 of the Civil Code of Puerto Rico, in order to establish the best welfare of the child as guiding criteria when granting the “patria potestas” and custody of a minor. “Patria potestas” is the body of rights and obligations that parents have over un-emancipated children under legal age.

Article 166A of our Civil Code provides that among the causes for which "patria potestas" can be deprived, restricted or suspended are: to cause, allow or tolerate the substantial risk of predictable endangering of the physical, mental and emotional health and morals of a child; noncompliance of duties or failure to exercise the powers of companionship, health care, physical and mental development of the child, among others; failure to comply with the duties to supervise and care for the minor who is under the "de jure" or "de facto" custody of another person; incur the voluntary abandonment of the minor; exploitation of the minor by forcing him/her to perform any act for profit or any other benefit; failure to comply with the service plan to return the minor to his/her home; incur conduct that if it were to be criminally prosecuted would constitute the crimes of murder, manslaughter or voluntary manslaughter, crimes against life and bodily integrity, rape, sodomy, lewd acts, indecent exposure, prostitution of a son or daughter, whether biological or adopted, obscene conduct; noncompliance of child support, abandonment of a child; having been convicted for any of the crimes listed above. Act No. 43 of July 24, 1997, also amended Article 166A, cited above, to include the crime of child abuse as a cause to deprive, restrict or suspend the "patria potestas" over a son or daughter.

In the exercise of the power of *parens patriae* the State has the responsibility and the duty to protect and guarantee the welfare of our children. Thus, the criteria that should also be taken into consideration by the Court when awarding custody, or making determinations involving "patria potestas", is the prior history of domestic violence of the parents.

In view of the compelling interest of the State to guarantee the physical and emotional integrity of our children, the Legislature deems it necessary and convenient to amend Articles 107 and 166A of the Civil Code in order

that a prior history of domestic violence be taken into account when awarding the custody of minors following a divorce, or in any controversy regarding the adjudication of custody. The discretion of the Court to hear the testimony of a minor when determining matters of custody and “patria potestas” is also established. This measure is also addressed to include as a cause to terminate or suspend “patria potestas” for a person to incur conduct which constitutes any of the following crimes: Article 3.1 abuse; Article 3.2 aggravated abuse; Article 3.3 abuse by threat; Article 3.4 abuse through the restriction of liberty, and Article 3.5 conjugal sexual aggression, of Act No. 54 of August 15, 1989, as amended, known as the "Domestic Violence Prevention and Intervention Act".

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- A new second paragraph is hereby added to Article 107 of the Civil Code of Puerto Rico to read as follows:

"Article 107.-

…

In all cases of custody and “patria potestas”, the history of the prior domestic violence conduct of the parents shall be considered to determine the best interests of the child. In this sense, it shall be evaluated as to whether the person has already been a beneficiary of the diversion program established in Article 3.6, and if convicted of any of the following crimes of abuse (Article 3.1); aggravated abuse (Article 3.2); abuse by threat (Article 3.3); abuse through the deprivation of liberty (Article 3.4) and sexual conjugal aggression (Article 3.5) of Act No. 54 of August 15, 1989, as amended, known as the "Domestic Violence, Prevention and Intervention Act". It shall be at the discretion of the Court to hear the testimony of the minor when determining custody or “patria potestas”.

…"

Section 2.- Clauses (a) and (b) of Subsection 8 are hereby amended, and a paragraph (1) is added to Subsection (8) of Article 166A of the Civil Code of Puerto Rico, to read as follows:

"Article 166A.-

The grounds, be it by commission or omission, for which a person may be deprived restricted or suspended of the “patria potestas” of a son or daughter are the following:

(1) …

(2) …

(3) …

(4) …

(5) …

(6) …

(7) …

(8) To incur conduct which, if criminally prosecuted, would constitute any of crimes listed below:

(a) Murder, manslaughter or involuntary manslaughter and attempt thereof, Articles 82 to 86 of the Penal Code.

(1) Child Abuse, Sections 37 and 38 of the "Child Protection Act".

(b) Crimes against the life and physical integrity, Articles 89 to 90 and 94 to 97 of the Penal Code

c) Rape, Articles 99 and 100 of the Penal Code

d) Sodomy, Article 103 of the Penal Code

e) Lewd acts, Article 105 of the Penal Code

f) Indecent exposure, Article 106 of the Penal Code

g) Prostitution of a son or daughter, whether biological or adopted, Articles 110 and 111 of the Penal Code

h) Obscene behavior as prohibited in Article 115 of the Penal Code

i) Non-compliance of the obligation to provide child support, Article 158 of the Penal Code

j) Abandonment of a child, Article 160 of the Penal Code

k) Sexual perversion of minors, Article 163; public begging, Article 164 of the Penal Code.

(1) Abuse (Section 3.1); aggravated abuse (Section 3.2); abuse by threat (Section 3.3) abuse by restriction of liberty (Section 3.4) and conjugal sexual assault (Section 3.5) of Act No. 54 of August 15, 1989, as amended, known as the Domestic Violence Prevention and Intervention Act".

For the purposes of this Section the words "material", "distribute", "knowingly", "obscene acts", and "sexual behavior" shall have the meaning established in Article 112 of the Penal Code.

No determination of a Court under this subsection shall affect a subsequent criminal procedure for the same acts.

9. Have been convicted of any of the crimes listed in subsection (8) of this Section.

Section 3.- This Act shall take effect sixty (60) days after its approval.

May 22, 2002

Rolando Quevedo-Motta, Esq., Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 233 (S.B. 1427) (Conference) of the 5th Session of the 13th Legislature of Puerto Rico, entitled:

AN ACT to add a new second paragraph to Article 107; amend clauses (a) and (b) of subsection (8) and to add a paragraph (l) to subsection 8 of Article 166A of the "Civil Code of Puerto Rico" in order to consider the prior history of conduct involving domestic violence when granting the custody of children following a divorce or in any controversy regarding the awarding of custody; establish the discretion of the Court to hear the testimony of the child in determinations of custody and “patria potestas”; etc.,

and finds the same are complete, true and correct versions of each other.

Rolando Quevedo-Motta