

(S.B. 1432)

(No. 300)

(Approved September 2, 1999)

AN ACT

To adopt the “Criminal Record Verification Act of Care Service Providers for the Children and the Elderly of Puerto Rico”; establish as the public policy of the Government of Puerto Rico the adoption, promotion, and implementation of mechanisms for the prevention of physical or sexual mistreatment or abuse of children and the elderly in care facilities; define terms; ban persons who have been convicted of violent sex crimes, child abuse, and certain felonies and misdemeanors that involve violence or moral depravation from working as care service providers for children and the elderly; provide qualified civil immunity to the persons in charge of enforcing the provisions of this Act; fix penalties; authorize the departments and instrumentalities of the Commonwealth Government to promulgate the regulations needed; and for other related purposes.

STATEMENT OF MOTIVES

Physical or sexual mistreatment or abuse constitutes one of the most traumatic and heartbreaking experiences that a human being can be submitted to. It has been recognized that these problems are a social reality that dramatically affect our people and the cause of great concern for the various sectors of Puerto Rican society. The physical and mental damage that this antisocial behavior may produce is even greater when the victims of these crimes are especially physically or mentally vulnerable, be it because of their age, health, or physical or mental disabilities. In view of this situation, the Legislature deems it necessary to approve measures whose purpose is to adopt and implement preventive and effective mechanisms to combat, prevent, and counteract said eventualities in the home and at care

centers. Thus, we seek to reduce the possibility of having that the persons in charge could threaten the physical and mental health of the children and the elderly.

In accordance with these considerations, the Government of Puerto Rico has declared its public policy to be the protection of the victims of sex crimes of a violent nature and has implemented an aggressive and wide-ranging program for the prevention, detection, criminal processing, and treatment in cases of physical or sexual mistreatment or abuse. These initiatives are particularly directed at the social groups or sectors that have customarily required additional or special protection, such as women, children, and the elderly. Among the preventive measures implemented as part of said public policy is the approval of Act No. 28 of July 1, 1997, which created in this jurisdiction a Registry of Persons Convicted of Violent Sex Crimes and Child Abuse. The statement of public policy set forth by this Act, provided for the need to protect the community against acts that constitute sexual abuse and child abuse. It was also established that given the danger of the possibility that the person convicted of crimes of this nature could repeat this kind of behavior, and in view of the risk that it poses and the damage that a person with an irrepressible tendency to commit violent sexual acts may cause because said person suffers from some mental or personality disorder, it becomes necessary to establish a Registry listing the person's address and containing personal information and other relevant facts. Through this Registry the government agencies and the citizenry shall be kept informed of the whereabouts of those persons that have been convicted of violent sex crimes or child abuse, as these terms are defined in the Act, when they are reintegrated into the community. The Registry

created by this Act does not have a punitive purpose; it is a way of guaranteeing the general safety, protection, and well-being of the citizens.

Furthermore, during recent years, efforts have been made to emphasize the importance of aged persons in our society. Among the measures adopted as an example of these efforts, we should mention Act No. 121 of July 12, 1986, whose purpose is to define the public policy and the Bill of Rights for Aged Persons; Act No. 68 of July 17, 1988¹, which created the Office for the Affairs of the Elderly; as well as Act No. 33 of June 28, 1994, which amended Section 95 of the Penal Code to define as a felony the denial of support to an elderly relative; and Act No. 9 of January 6, 1998, which adopted a procedure for issuing orders for the protection of these persons, victims of mistreatment and crimes, among others.

Likewise, Act No. 43 of July 24, 1997, among other things amended Act No. 75 of May 28, 1980, as amended, for the purpose of defining as a crime the intentional mistreatment and the mistreatment by negligence committed against minors. With the approval of this Act, the Legislature added measures directed at achieving greater effectiveness in the fight against the mistreatment of minors on our Island.

The Legislature of Puerto Rico, aware of the need and desirability of continuing to widen the scope of action and adopting a perspective of a preventive nature regarding such an important and sensitive issue for the common well-being, deems it imperative to extend the scope of the information related to the persons convicted of violent sex crimes and child abuse, which consists of simply compiling and divulging said information. It is necessary to anticipate and prevent, in any way possible, those

¹ Should read Act No. 68 of July 11, 1988.

situations that may lead to the mistreatment or abuse of boys, girls, and the elderly.

The proliferation in recent years of care centers for these groups that deserve special protection makes it indispensable that the State, in its function as *parens patriae*, take extraordinary measures to protect them. The federal and state jurisprudence, has acknowledged the State's inherent power to prohibit or regulate certain activities so as to foster or protect the public safety, morals, health, and general well-being of the citizens. *Berman vs. Parker*, 348 US 26, (1954); *Vélez vs. Municipio de Toa Baja*, 109 DPR 369 (1980). Our government has declared as public policy the guaranteeing of the safety and the well-being of our boys, girls, and the elderly. The Supreme Court of Puerto Rico has reiterated that the cases in which minors are involved are of the highest public interest. *Pueblo en interés de los menores R.P.S., M.P.S. y C.J.N.S.*, 93 J.T.S. 121, 134 D.P.R. __ (1993). The rights that the State intends to protect do not constitute a mere private or individual interest, but a public interest aimed at protecting the physical and emotional safety and the general well-being of its citizens.

In the federal sphere, we may note a number of measures aimed at protecting these high interest groups. Public Law No. 103-322 of September 13, 1994, better known as the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program," requires that the states, including Puerto Rico, adopt legislation so that persons convicted of certain types of crimes of a sexual nature and against minors meet the obligation of including their information in a registry created for this purpose, for a period of at least ten (10) years. The main purpose of this federal legislation is to protect the citizenry from persons convicted of violent sex crimes and from those who abuse minors through the

establishment of the requisite of registering when the convict is reintegrated to the community.

Furthermore, according to the purposes of this project, Public Law No. 105-220, approved on August 7, 1998, provides for the strict regulation and supervision, of a preventive nature, of the care centers for children under 18 years of age, as well as for the elderly.

Likewise, this Act provides that a certification be issued by the government agency authorized for such purposes stating whether the provider of these services has been convicted of any crime that threatens the well-being of the children, the elderly, or those persons with disabilities under their custody.

The public policy calling for strict regulations and the supervision, and control of the operations of the care centers for children and the centers or institutions that provide services to the elderly, is based on these legal principles, which constitute an essential attribute of the government. In view of the State's compelling interest to guarantee the best possible well-being and safety of the citizenry, it is convenient and necessary to adopt this Act as an initiative of a preventive nature against the crime of physical and sexual abuse and the mistreatment of these fragile sectors of our population. Various jurisdictions in the United States of America have adopted statutes similar to this legislation so as to enact measures and procedures aimed at preventing sexual abuse and the mistreatment of children and the elderly. Among these, we may underline New York's, "Kieran's Law;" Colorado's, "Concerning Criminal Background Checks on Nursing Care Facility Applicants," COH 1084; California "Criminal Background Checks; Long Term Care Providers; Nurses," CA SB 945.

This measure, together with the diligent enforcement of other similar social protection statutes, such as the child protection and domestic violence prevention laws, constitutes an additional step in the fight to protect our children and the elderly, and ensure a better quality of life for them.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Short title

This Act shall be known and may be cited as the “Criminal Record Verification Act of Care Service Providers for the Children and the Elderly of Puerto Rico”.

Section 2.- Public Policy Statement

It is hereby stated that the public policy of the Government of Puerto Rico is to adopt, promote, and put in practice, by all means possible, a comprehensive system for the prevention of the physical or sexual mistreatment or abuse of children and the elderly of Puerto Rico, in their own homes as well as in care centers. In view of the danger posed by the fact that a person who has been convicted of certain crimes, including those constitutive of physical or sexual mistreatment or abuse, may again incur in that type of conduct, and in view of the great danger that a person with a history of physical or sexual mistreatment or abuse may cause when providing care for children, patients, and the elderly, it is imperative to adopt and implement effective preventive measures to combat, prevent, and counteract such eventualities, in such a way as to avoid even the possibility that such persons may threaten the physical and mental safety of children and the elderly, in their own homes as well as in care centers. The mechanisms adopted and implemented pursuant to this Act do not have a punitive purpose; they are instead aimed exclusively at protecting the safety

and the well-being of those sectors of our society which are the most vulnerable and the most deserving of our protection.

Section 3.- **Definitions**

For the purposes of this Act, the following terms shall have the meaning expressed below:

(1) “Crimes against minors”- are the crimes listed in subsection (a) of Section 3 of Act No. 28 of July 1, 1997, when these are committed against a person under eighteen (18) years of age.

(2) “Violent sex crimes”- are the crimes listed in subsection (a) of Section 3 of Act No. 28 of July 1, 1997, in which force, violence or intimidation is used against a person with the intention of sexually abusing said person.

(3) “Entity provider of care services”- is any natural or juridical person that provides confinement, ambulatory or day-care services to children and the elderly in Puerto Rico, including, but not limited to care centers, children’s nurseries, housekeepers, elderly persons’ homes, convalescence homes, intermediate care facilities, rehabilitation facilities, psychiatric care or treatment centers, care or treatment facilities for persons with physical or mental disabilities, care or treatment facilities for persons with mental retardation, and private residences where such services are provided, as well as any natural or juridical person that provides such services in the home or in the particular residences of their users or beneficiaries; this definition does not include hospitals, clinics, diagnostic and treatment centers, medical offices or medical-hospital facilities of any kind, be they providers of confinement, day-care or ambulatory services, nor does it include correctional facilities in which medical-hospital or diagnostic and treatment services may be provided in an incidental manner.

(4) “Elderly Person”- is any person of legal age as defined by Act No. 68 of July 11, 1988, as amended, known as the “Office for the Affairs of the Elderly Act”.

(5) “United States”- are the states of the United States of America, as well as the District of Columbia, its territories, and possessions.

(6) “Child”- is any person under eighteen (18) years of age.

(7) “Provider”- is a natural person that provides care services to children or the elderly in Puerto Rico, regardless of whether these services are provided in exchange for payment, or any other form of remuneration, or voluntarily, on their own, or by virtue of an employment contract with an entity that provides care services, whose employment, contractual or voluntary service, entails or implies direct or financial contact, be it routine or incidental, supervised or not, with children and the elderly.

(8) “Registry”- is the registry of persons convicted of sex crimes and child abuse created by Act No. 28 of July 1, 1997.

(9) “System”- is the Criminal Justice Information System created by Act No. 129 of June 30, 1977, as amended.

(10) “Applicant”- is any natural or juridical person who applies for and is offered a job, or contractual or voluntary service as care services provider or providing entity.

Section 4.- Prohibition to providers and certification

(A) No person may function as a care service provider for children and the elderly or be able to provide such services in the jurisdiction of the Commonwealth of Puerto Rico unless having previously applied for and received a certification indicating that said person is not registered in the Registry of persons convicted of sex crimes and child abuse created by Act No. 28 of July 1, 1997, or in the Criminal Justice Information System

created by Act No. 129 of June 30, 1977, as amended, as convicted of any violent sex crime or child abuse or any of the following felonies:

- (1) Murder, in any of its degrees or modalities.
- (2) Homicide, in any of its degrees or modalities.
- (3) Incitement to suicide.
- (4) Aggravated assault, in any of its degrees or modalities.
- (5) Mutilation.
- (6) Throwing acid to a person.
- (7) Rape, in any of its modalities.
- (8) Seduction.
- (9) Sodomy.
- (10) Bestiality.
- (11) Indecent exposure.
- (12) Obscene propositions.
- (13) Procurement, roguery, or carnal commerce.
- (14) Incest.
- (15) Restriction of liberty, in any of its degrees or modalities.
- (16) Kidnapping, in any of its modalities.
- (17) Abandonment of a minor.
- (18) Child abduction.
- (19) Illegal deprivation of custody
- (20) Adoption in exchange for payment.
- (21) Perversion of a minor.
- (22) Public mendicancy by a minor.
- (23) Theft.
- (24) Extortion.
- (25) Abuse against minors or disabled persons.

- (26) Imposture.
- (27) Arson, in any of its degrees or modalities.
- (28) Devastation.

(B) The certification required in subsection (A) of Section 4 of this Act shall be issued by the Puerto Rico Police. The Police Superintendent shall adopt and enact the necessary regulations to put into effect the provisions of this Act which concern the application and issue of said certification. Said regulations may include the requirement of having applicants fill out a form with detailed personal information and providing their photograph and samples of their fingerprints to the Puerto Rico Police. The Superintendent may keep said forms, photographs, and samples, and use them for investigative purposes.

Section 5.- Prohibitions to entities providers of care service

(A) No entity that provides care services may contract, employ, or use in any capacity, through remuneration or for free, any provider of such services unless he or she has previously presented in a certification indicating that he or she is not registered in the Registry of persons convicted of sex crimes and child abuse created by Act No. 28 of July 1, 1997, or in the Criminal Justice Information System created by Act No. 129 of June 30, 1977, as amended, as convicted of any violent sex crime or child abuse, or any of the crimes previously listed in Section 4 of this Act.

(B) Any entity that provides care services shall keep the necessary records to verify that said entity is in compliance with the provisions of Section 5 of this Act.

The absence or non-existence of such records or any deficiency therein shall constitute “prima facie” evidence that said entity has failed to comply with this requirement, and shall constitute, besides the crime typified

in Section 7 of this Act, an administrative fault consisting of the failure to comply with the necessary administrative regulations for the operation of said entity.

(C) The Department of Health and the Department of the Family shall incorporate the verification of compliance with the provisions of Section 5 of this Act in their respective regulations related to the certification, authorization, or issue of licenses or operating permits for entities that provide care services.

(D) The determination of the Department of Health or the Department of the Family through an administrative process carried out according to the provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico,” that any entity that provides care services under its supervision and regulations has incurred the administrative fault described in subsection (B) of Section 5 of this Act, shall be sufficient cause, on the first occasion, for the suspension of the certification, authorization, license, or operating permit of said entity; on a second or subsequent occasion, said determination shall be cause enough for the revocation of the certification, authorization, license, or operating permit of said entity.

Section 6.- Qualify Immunity

Any person in charge of carrying out the purposes and duties imposed by this Act shall be exempted and shall have immunity against civil liability when acting in good faith in the fulfillment of his or her duties.

Section 7.- Penalty

Any person who fails to comply with the provisions of this Act shall incur a misdemeanor, and if convicted, shall be punished with a fine not to exceed the sum of five hundred (500) dollars, or with a term of

imprisonment not to exceed six (6) months, or with both penalties, at the discretion of the sentencing court.

Section 8.- Powers of regulation

All departments, bodies, agencies, and instrumentalities of Government of the Commonwealth of Puerto Rico are hereby expressly authorized to establish the necessary regulations for the implementation of this Act.

Section 9.- Circulation and publication

The Puerto Rico Police, the Justice Department, the Department of Health, and the Department of the Family shall have the obligation of publishing the contents of the provisions of this Act in the public media they deem proper.

Section 10.- Severability clause

If any clause, paragraph, Section, or part of this Act, were declared unconstitutional by a court with jurisdiction and competence, the ruling shall not affect or invalidate the rest of this Act, and its effect shall be limited to the clause, paragraph, section, or part declared unconstitutional.

Section 11.- Effectiveness

This Act shall take effect one hundred and eighty (180) days after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 300 (S.B. 1432) of the 5th Session of the 13th Legislature of Puerto Rico:

AN ACT to adopt the “Criminal Record Verification Act of Care Service Providers for the Children and the Elderly of Puerto Rico”; establish as the public policy of the Government of Puerto Rico the adoption, promotion, and implementation of mechanisms for the prevention of physical or sexual mistreatment or abuse of children and the elderly in care facilities; define terms; ban persons who have been convicted of violent sex crimes, child abuse, and certain felonies and misdemeanors that involve violence or moral depravation from working as care service providers for children and the elderly; etc.,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 10th of November of 2003.

Elba Rosa Rodríguez-Fuentes
Director

