

“Office of Pretrial Services Act”

Act No. 177 of August 12, 1995 as amended

(Contains amendments incorporated by:

Act No. 112 of August 11, 1996

Act No. 58 of August 4, 1997

Act No. 296 of December 11, 1998

Act No. 133 of June 3, 2004)

(Amendments non-incorporated:

Act No. 282 of December 27, 2011)

To create the Office of Pretrial Services; define its functions, powers and faculties; typify as a crime the failure to comply with the conditions of release on probation granted by the Office of Pretrial Services; appropriate funds to accomplish its purposes; and for other related ends.

STATEMENT OF MOTIVES

In Puerto Rico, a person who is charged with a crime has the right to remain free on bail while the criminal procedure against him/her is heard until an adjudication of guilt is made. The creation of the Office of Pretrial Services is hereby proposed, as a body attached to the Department of Correction and Rehabilitation of the Government of Puerto Rico, with the purpose of submitting verified information to the courts at the moment of fixing or modifying bail or those conditions that can best ensure the presence of the accused at the various stages of the trial, watch over the public safety and the right of the defendant to be released on parole.

The Office shall have the task of investigating and evaluating every defendant charged with certain crimes and offer its recommendations on the possibility of decreeing the conditional release of the person indicted, as an alternative or in addition to the imposition of the bond. To these effects, the Office shall prepare a report to be presented to the court at the hearing for the imposition of bail. The judges shall have before them trustworthy information that shall help them impose bail or not, or the conditions in substitution of, or in addition to bail, that adjust to the particular circumstances of each case.

In the exercise of his/her discretion, after evaluating the report presented by the Office, the judge may impose or modify a cash bail or grant release on parole as an alternative or in addition to bail, subject to the conditions that ensure the appearance of the person accused in the different stages of the criminal procedure. Every imputed persons [sic] who is released on parole subject to conditions, with or without bail, shall be supervised by the Office until a decision or verdict is issued or until the conclusion of the proceeding. The creation of the

Office shall propitiate the elimination of the effects of economic disparity in obtaining release on parole and shall reduce the unnecessary use of the scarce and costly correctional facilities. The participation in the Office's Programs shall be strictly voluntary and the right to be released on parole after posting bond, shall remain intact.

Currently, the Expedited Bonds Project, created by virtue of an order of the United States District Court for the District of Puerto Rico on April 28, 1988, in the case of *Morales Feliciano v. Roselló González*, Civil No. 79-04 (PG), provides some of the services that shall be offered by virtue of this Act. The Office of Pretrial Services may receive financial appropriations and personnel and equipment from any source, including the Expedited Bonds Project.

Be it enacted by the Legislature of Puerto Rico:

Section 1. — [Short Title]. (4 L.P.R.A. § 130)

This Act shall be known and referred to as the "Office of Pretrial Services Act".

Section 2. — [Definitions] (4 L.P.R.A. § 1302)

For the purposes of this Act, the following terms and phrases shall have the meaning stated hereinbelow, unless a different meaning is clearly construed from the text:

- (a) Department. — Shall mean the Department of Corrections and Rehabilitation.
- (b) Executive Director. — Shall mean the Executive Director of the Office of Pretrial Services.
- (c) Report. — Shall mean the written report to be presented before the court as established in § 1310 of this title.
- (d) Release in custody of a third party. — Is the provisional conditional release of a person charged with a crime when a third party makes a commitment with the court to supervise the person imputed in complying with certain conditions. The third party is also committed to inform the court of the noncompliance of any of those conditions. The third party shall accept its obligations in person, before the court, and the imputed person shall likewise accept the supervision of the third party.
- (e) Release on personal recognizance. — Is the conditional release of a person charged with a crime after appearing before a court, when he/she is allowed to remain free during the course of the criminal proceeding, under his/her written promise to appear in court every time he/she is summoned and that he/she will comply with the judicial mandates and orders, including the conditions imposed by the court during his/her conditional release.
- (f) Conditional release. — Is the provisional release of a person charged with a crime after appearing before a court, when the court allows him/her to remain free during the course of the criminal proceeding, with or without posting bail, provided the person charged with a crime meets one or several conditions imposed on him/her by the court, while his/her conditional release is in effect.
- (g) Release on deferred bail. — Is the conditional release of a person charged with a crime after appearing before the court, when the latter sets a cash bail, but allows him/her to remain free during the criminal proceeding without posting the bail set, provided the person charged

with a crime meets with one or several conditions imposed on him/her by the court during his/her conditional release; Provided, That in the event it is determined that the person charged with a crime has failed to comply with any of said conditions, he/she shall be required to post bail and if he/she fails to do so, shall be imprisoned immediately, without impairing the provisions of the Rules of Criminal Procedure.

(h) Parole pending criminal sentencing. — Is the release of a person charged with a crime after appearing in court, decreed by the judicial authority, during the criminal proceeding. The parole may be obtained by any means, including, but, without being limited to, the release on personal recognizance, in custody of a third party, under non-monetary conditions, or on deferred bail.

(i) Office. — Is the Office of Pretrial Services created by this Act.

(j) Secretary. — Shall mean the Secretary of the Department of Correction and Rehabilitation.

Section 3. — Creation of the Office. (4 L.P.R.A. § 130)

(a) The Office of Pretrial Services is hereby created as an autonomous entity attached to the Department of Corrections and Rehabilitation. The Office shall constitute an Individual Administrator for the purposes of Act No. 5 of October 14, 1975, known as the "Puerto Rico Public Service Personnel Act". The Office, which is exempted from the norms and provisions of Act No. 164 of July 23, 1974 [3 L.P.R.A. §§ 931 et seq.], as amended known as the "General Services Administration Organic Act," may acquire by purchase or gratuitously, the equipment, materials and services needed to comply with the provisions of this Act.

(b) The Office shall be administered and supervised by an Executive Director who shall be appointed by the Governor and shall carry out the functions and powers conferred on him/her by this Act. This Executive Director shall receive an annual salary of seventy-five thousand dollars (\$75,000).

Section 4. — Functions and Duties of the Office. (4 L.P.R.A. § 1304)

The Office shall have the following functions and duties:

(a) Compile and verify information on the socio-economic, and educational background, employment, residence, ties with the community, and any other information, including addiction or dependency on alcohol or controlled substances, that shall serve as a guide for the court to determine the means to release any person arrested who is charged with a crime on parole.

(b) Make recommendations to the courts in the determination of the terms and conditions of the conditional release.

(c) Submit written reports to the courts on the investigation performed in each case, including the findings and recommendations that may be useful or needed to discern:

(1) The need to impose bail to guarantee the appearance of the [accused], at all the judicial procedures of his/her case, or

(2) the proper conditions that may be imposed in addition to or instead of bail, in order to avoid the risk of failure to appear, the commission of new crimes or any other interference, with the order by administration of justice and social peace.

(d) When formulating the recommendations for the court on the conditions that shall be imposed [upon] an [accused], the following factors shall be taken into consideration as minimum:

- (1) Family ties and community relations.
- (2) Employment history.
- (3) Financial resources.
- (4) Record of prior convictions.
- (5) Record of appearances in court on previous occasions, flight to avoid being prosecuted and failures to appear in court.
- (6) Circumstances of the arrest.
- (7) Any other pertinent information.

(e) Supervise the compliance with the conditions under which the parole pending criminal sentencing was imposed to those persons under its jurisdiction, and without delay inform the courts and any other pertinent official of any failure to comply with said conditions.

(f) Arrest any person under its supervision who fails to comply with any of the conditions under which the parole pending criminal sentencing was imposed upon him/her; in which case, the person arrested shall be taken before a magistrate, who shall make the corresponding determinations, as provided in the Rules of Criminal Procedure, App. II of Title 34.

(g) Collaborate with the courts and all the agencies related to the administration of justice to develop programs that eliminate unnecessary summary imprisonment and protect the public against the violation of the conditions.

(h) Request the assistance of any agent or agency of the federal, state or municipal public law, in order to fulfill the provisions of this Act.

Section 5. — Functions and Powers of the Secretary. (4 L.P.R.A. § 1306)

The functions and powers of the Secretary shall be to:

- (a) Establish the public policy of the Office to implement the provisions of this Act.
- (b) Supervise the implementation of the Pretrial Services Program and approve the establishment of regional centers to provide said services.

Section 6. — Functions and Duties of the Executive Director. (4 L.P.R.A. § 1307)

- (a) Administer and supervise the operations of the Office, including all its personnel.
- (b) Recruit and appoint personnel, as well as contract the necessary technical and professional services to execute the purposes of this Act, subject to the applicable laws and regulations.
- (c) Coordinate and solicit to obtain information through the Criminal Justice Information System (SUC, Spanish acronym), the National Crime Information Center (NCIC), the Vehicle and Driver Information System (VADIS/DAVID), the Courts Administration Office (OAT, Spanish acronym), and any other similar information systems.
- (d) Prepare reports to the Secretary, on the work accomplished by the Office, including statistical studies based on the data compiled.

- (e) Prepare the annual budget of the Office and submit [it] to the Secretary for his/her approval.
- (f) Adopt and promulgate the regulations that are necessary or convenient to implement the provisions of this Act, including the requirements for the agents of the Special Investigation and Arrest Special Unit to possess and carry firearms. The Executive Director shall adopt and promulgate the regulations and norms for the contracting, appointment and compensation of the Office personnel, that shall adjust to the essential merit principles; he/she shall also establish, through regulations, the norms and conditions that shall govern the rendering of services to the Office by persons assigned by other government agencies or by natural or juridical private persons, and for accepting donations in services, in kind or cash, from other Puerto Rico government agencies or from other jurisdictions and to participate in federal or other jurisdictional programs, as well as other government or private institutions.
- (g) Any other function entrusted by the Secretary.

Section 7. — [Specialized Arrests and Investigation Unit; creation] (4 L.P.R.A. § 1308)

The Office shall have a Specialized Arrests and Investigations Unit. The qualification and training requirements of the members of the Unit, shall be provided by regulations. The investigating personnel shall perform the following functions and shall have the following powers:

- (1) Carry out investigations with regard to the compliance of the conditions imposed on the persons under the Office's jurisdiction.
- (2) Make arrests.
- (3) Serve court orders and notices regarding the persons imputed who are under conditional release.
- (4) Bear firearms, subject to the regulations approved by the Board.
- (5) Take oaths.

Section 8. — Eligibility. (4 L.P.R.A. § 1309)

Any person charged with an offense that entails bail, may submit him/herself to the jurisdiction of the Office.

- (a) The Office shall be responsible for evaluating the cases under its jurisdiction in order to make a recommendation to the courts regarding the determination of the terms and conditions of the corresponding bail.
- (b) Parole pending criminal sentencing, not subject to pecuniary conditions, shall be recommended for any person charged with an offense when it is determined that:
 - (1) The pecuniary conditions are not needed to ensure the appearance of the person charged at the trial or any other judicial procedure.
 - (2) Parole pending criminal sentencing does not place any person or community in risk of physical harm.
 - (3) Such parole pending criminal sentencing does not violate the integrity of the judicial process.

Section 9. — Conditions that may be imposed. (4 L.P.R.A. § 1308)

The Report submitted by the Office to the court shall include a recommendation on which condition or conditions may be imposed to the indicted person, to direct his/her conditional release under his/her own recognizance, in custody of a third party, or on deferred bail. The conditions can be one or more of the following:

- (a) Appear in person periodically before the Office, or the person or institution designated by the court.
- (b) Shall not possess any firearm or other dangerous weapon.
- (c) Keep from approaching or communicating with a specific person or a class of persons.
- (d) Keep from visiting a specific area, establishment or place.
- (e) Abstain from specific actions or using alcoholic beverages or narcotic drugs or any other controlled substance, including submitting periodically to testing for the use of controlled substances.
- (f) Submit to treatment against drug or alcohol addiction.
- (g) Submit to medical or psychiatric treatment.
- (h) Work, or pursue an academic or vocational course of studies.
- (i) Attend or reside in a facility designated by the court.
- (j) Support his/her dependents.
- (k) Observe any schedule prescribed by the court.
- (l) Remain in custody of a person or institution designated by the court, that is willing to supervise the [accused] during his/her conditional release. This third party shall be responsible for notifying the court and the Office if the indicted person fails to comply with any of the conditions the third party has agreed to supervise.
- (m) Remain under the direct supervision of the Office and appear as ordered, at a supervision center, with or without the use of an approved electronic supervision system.
- (n) Any other reasonable condition imposed by the court.

Section 10. — Access to government files and records. (4 L.P.R.A. § 1309)

The Office shall have access to the files and records of the agencies of the Government of Puerto Rico, as provided by applicable statutes.

Section 11. — Confidentiality of the Office Records. (4 L.P.R.A. § 1310)

(a) All the information provided by the person charged during his/her initial interview or subsequent contacts with the Office and all its personnel, shall be strictly confidential, as well as all the information derived from the information provided by the person charged during his/her initial interview or subsequent contacts with the Office. Said information shall not be divulged without the written consent of the person charged, except for the report with the recommendations of the Office, which shall be remitted to the prosecutor, the defense attorney and the judge. This information may never be used against the person charged during his/her trial. In the event of failure to appear at court when the person charged has been properly summoned, the Office may furnish to the court or to any other public law agency, upon their request, the last known address of the person charged or any other

information that may help in his/her arrest. The original report shall remain in the files of the Office of Pretrial Services and a copy shall remain in the confidential files of the Court.

Section 12. — [Appropriations] (4 L.P.R.A. § 1301 note)

The funds for the operation of the Office shall be appropriated directly from unencumbered funds in the Commonwealth Treasury and from any other allowable funds, including the fund of fines established by the United States District Court for the District of Puerto Rico in the case *Morales Feliciano v. Roselló González*, Civil No. 79-04 (PG). The funds thus appropriated shall not be transferred, nor reappropriated for any purpose unrelated to the provisions of the present Act. The Director shall maintain control over and shall keep a detailed report of the use of the appropriated funds.

Section 13. — [Appropriations] (4 L.P.R.A. § 1301 note)

The initial amount of two hundred and fifty thousand (250,000) dollars is hereby appropriated to the Office, from unencumbered funds in the Commonwealth Treasury, to commence its operations. For the subsequent years, the funds needed to carry out the purposes of this Act shall be appropriated in the Government of Puerto Rico General Expenses Budget Joint Resolution.

Section 15. — This Act shall take effect immediately after its approval.

Note. This compilation was prepared by the Puerto Rico OMB staff who have striven to ensure it is complete and accurate. However, this is not an official compilation and may not be completely free of error. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the act original text. Compiled by the Office of Management and Budget Library.