



**Original:** 19 July 2020- Enactment – Puerto Rico  
**Revision 2 -** 28 January 2021 Translation Spanish to English, Banner and outlay

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## Translation of the Parental Alienation Enactment of the



**Commonwealth of Puerto Rico**

### **Law No. 70 of the year 2020**

**(P. de la C. 2168; 2020, law 70**

**To amend Articles 7 and 9 of Law No. 223 of 2011, Law for the Protection of the Rights of Minors in the Process of Adjudication of Custody.**

**Act No. 70 of July 19, 2020**

To amend Articles 7 and 9 of Law 223-2011, known as the “Law for the Protection of the Rights of Minors in the Process of Adjudication of Custody”, in order to contemplate parental alienation in the determination of custody; and for other related purposes.

#### **STATEMENT OF MOTIVES**

The family is the main protagonist in the upbringing and development of our minors. Family experience modulates and guides children through childhood and towards maturity, it is in the family where we can find explanations for the behavior and conduct of our minors. An adequate emotional and affective bond between parents and children translates into healthy family development for both. Unfortunately during the last decades, we have seen changes in the family structure, due to the increase of divorces or separations.

After a divorce or separation, as the case may be, and once the custody of the children and / or daughters has been established, the State guarantees the right of both the minors and the parents, to relate and maintain the appropriate family tie. In this way, a visiting regime is established for the non-custodial parent; They have important psychological functions for the development of childhood, in addition to safeguarding the emotional bond between the child and her parents.

However, and even when the State guarantees the aforementioned right, there are occasions in which one of the parties obstructs the filial relations of its sons and daughters with the other parent; in certain cases transforming the conscience of their children, through the use of different strategies, in order to prevent, obstruct or destroy their ties with the other parent.

This conduct, known as Parental Alienation, originates mainly in the context of disputes over custody and care of children. The effects of parental alienation on minors and the estranged parent

are considered a variant of emotional and psychological abuse, is one of the most subtle forms of child abuse, which in turn can produce permanent psychological damage in the bond with the parent (a) disposed of; as well as in the integral development of the minors involved.

Although there is not a pattern applicable to all cases, important factors have been identified that alert to its presence. That is why the judicial determination should not be sustained in legal statements without the presence of specialists in human behavior. In most jurisdictions, it is viewed as a problem to be addressed by civil and not criminal means. The criminal process can place you in an uncomfortable situation of testifying to penalize one of your parents. Apart from this, the complexity of the alienating behavior presents a challenge for criminal law. We understand that the determination of custody and its subsequent evaluation before the family court should be the most appropriate mechanism to address these situations and provide the remedies that tend to advance the emotional health of the minor and strengthen family relationships as much as possible.

It is the public policy of the Government of Puerto Rico to ensure the best interest, protection, and comprehensive well-being of children and adolescents, and in the duty of ensuring that well-being, reasonable opportunities and efforts must be provided to preserve family and community ties when it does not harm them. For this reason, this Legislative Assembly considers it necessary to update the definitions of this statute in order to continue effectively guaranteeing the well-being and protection of children on our island.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:**

Section 1.- A new subsection (13) is added, and the current subsection (13) is renumbered as subsection (14), in Article 7 of Act 223-2011, to read as follows:

"Section 7.- Criteria to be considered in the award of custody

When considering a custody request in which controversies arise between the parents regarding it, the court will refer the case, to the Social Unit of Family Relations, or to the licensed professional that it deems necessary, such as psychologists, psychiatrists, counselors or social workers, who will conduct an evaluation and submit a report with recommendations to the court. Both the social worker or the licensed professional indicated above, when making their evaluation, as well as the court, when issuing its determination, will take into consideration the following criteria:

(1) ...

(13) It will analyze the presence of parental alienation or any other reasons that could cause the minor to resist interacting with their parents. Parental alienation refers to the obstruction by one of the parents of the filial relations of their children, minors, with the other parent, through the use of different strategies, with the purpose of transforming or indoctrinating the conscience of their sons or daughters, for the purpose of denigrating, preventing, obstructing or destroying their ties with the other parent and the thoughts or feelings of the minor present of rejection towards the other parent; shows negative attitudes towards the child or if, in fact, the affective bond between the minor and the other parent has been affected. All the actions that arise from this subsection must occur repeatedly so that they constitute a pattern and not based on isolated events.

Parental alienation may be evidenced, without it being understood as a limitation, in the following ways:

(i) Refuse to forward phone calls or attempt to direct the content of such calls to children.

(ii) Organize activities with the children during the period that the other parent must normally exercise their visitation rights or seek ways to hinder the reunion between them.

- (iii) Intercept letters, messages, or packages sent to children.
- (iv) Devalue and insult the other parent in front of the children.
- (v) Refusing to inform the other parent, on purpose, of the activities in which the children are involved, such as school, family, social or other functions.
- (vi) Talk rudely about the other parent's new spouse.
- (vii) Prevent the other parent from exercising their visitation rights.
- (viii) Make important non-emergency decisions about the children without consulting the other parent.
- (ix) Change (or attempt to change) your last names or first names.
- (x) Prevent the other parent from accessing the children's school and medical records.
- (xi) Going on vacation without children and leaving them with someone else, even if the other parent is available and willing to take care of them.
- (xii) Smear the clothes or gifts that the other parent has bought for them, and prohibit them from wearing them.
- (xiii) Threaten the children with punishment if they dare to call, write, or contact the other parent.
- (14) Any other valid or pertinent criteria that can be considered to guarantee the best welfare of the minor ”.

Section 2.- Article 9 of Act 223-2011 is hereby amended to read as follows:

“Article 9.- When joint custody will not be considered beneficial and favorable to the best interests of minors.

Joint custody will not be considered beneficial and favorable to the best interests of minors in the following cases:

- |         |         |         |         |
|---------|---------|---------|---------|
| (1) ... | (3) ... | (5) ... | (7) ... |
| (2) ... | (4) ... | (6) ... | (8) ... |

If, after granting joint custody, one of the parents recklessly, arbitrarily and unfairly refuses to accept the said decision, and performs acts to hinder the relationship of the other parent with the minors, the court may alter the decree and grant custody to the other parent. Before the presentation of constitutive acts of parental alienation, the court may order an evaluation to the Social Unit of Family Relations or the licensed professional that it deems necessary, such as psychologists, psychiatrists, counselors or social workers, who will prepare reports and present their findings and recommendations to the court. The court may, if it deems it necessary, evaluate the parties or any other evidence it deems pertinent.

When the evidence has been found that one of the parents has committed parental alienation, by the party that has custody of the minors, the court will evaluate the removal of custody or other precautionary measures at the discretion of the judge. If the parental alienation is committed by a relative, stepmother, stepfather, or partner of the parent, the court will take measures to protect the minors.

When it is a parent who incurs in parental alienation behavior, the court will evaluate ordering psychological therapy as a protective measure prior to the decision to remove custody. In the case of ordering psychological therapies, the court will evaluate the progress of this to make new recommendations, if necessary, and merited.

Any parent who causes emotional or psychological damage to minors due to parental alienation behavior will be ordered to pay for psychological therapies that involve repairing said damage to minors.

The court will have the discretion to take the measures and issue the orders it deems pertinent at any stage of the process. "

Section 3.- This Act shall enter into force immediately after its approval.

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**Important notes:**

This document is an unofficial translated copy of the original law when it was approved, it does not include subsequent amendments.

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