

## *Investigation, Prosecution and Appeal Commission*

Act No. 32 of May 22 of 1972, as amended

(Contains amendments incorporated by:

Act No. 22 of April 15, 1976

Act No. 23 of July 16, 1992

Act No. 50 of January 22, 1999

Act No. 238 of August 30, 2000

Act No. 230 of October 23, 2006)

To create an Investigation, Prosecution and Appeal Commission, which shall deal with cases of misuse or abuse of authority by certain public officers and to act as an appellate entity in determined cases and to abolish the Police Commission.

*Be it enacted by the Legislature of Puerto Rico:*

### **Section 1. — [Commission-Creation and integration] (1 L.P.R.A. § 171)**

An Investigation, Prosecution and Appeal Commission is hereby created to be composed of five Commissioners appointed by the Governor with the advice and consent of the Senate. No officer or employee of the Department of Justice, of the Department of the Treasury nor of the Police of Puerto Rico or of any organization ascribed thereto may be a member of the Commission, except persons who on the date of effectiveness of this Act are members of the Police Commission, who shall become a part of the Commission herein created, until the expiration of the terms for which they were appointed.

The Commissioners shall discharge their respective offices for a period of three years from the date of their appointment and until their successors have been appointed and qualify and no other compensation shall be given except as provided in Section 12. The Governor shall designate one of the members as Chairman of the Commission. Three Commissioners shall constitute a quorum to carry out agreements.

When one or more of the Commissioners become physically disabled or for any other reason are unable to fulfill the functions of their office, the Governor, with advice and consent, may appoint one or more Commissioners to discharge said office for the remaining term of the corresponding Commissioner or Commissioners who created the vacancy.

### **Section 2. — [Commission—Functions] (1 L.P.R.A. § 172)**

The Commission shall have the following functions:

(1) In the case of an accusation of misuse or abuse of authority of any Commonwealth or municipal law enforcement officer, internal revenue officer or any other official of the

Executive Branch authorized to make arrests, if the authority empowered to penalize said public officer has failed to do so, the Commission on petition of the Governor or a mayor, on its own initiative or on the request of any citizen, or by referral of the authority empowered to penalize when the latter loses jurisdiction in those cases in which the terms indicated in this Act apply, may investigate, and if deemed necessary, shall formally begin any proceeding leading to the imposition of any disciplinary measure or sanction that the said authority empowered to penalize might have imposed on the officer through the preferment of specific charges against the public officer concerned within the maximum term of six (6) months from and after the date understood as that on which the authority empowered to penalize said officer failed to do so.

It shall be understood that there has been a misuse or abuse of authority when any officer of those comprised in the first paragraph of this section incurs in any of the following acts, among others:

- (a) Illegal or unreasonable arrests or detentions;
- (b) illegal or unreasonable searches and seizures;
- (c) unjustified or excessive assault and battery;
- (d) discrimination for political or religious reasons, socioeconomic conditions or for any other reasons not applicable to every person in general;
- (e) undue delay in conducting before a magistrate a person arrested or detained;
- (f) unjustified use of violence, physical or psychological coercion, undue intimidation or prolongation upon or on a person arrested or detained for investigation purposes;
- (g) refusal of the officer to permit a person involuntarily arrested or detained to communicate with his closest relative or his attorney;
- (h) wiretapping, recording or any other violation by means of physical, chemical or electronic devices of private communications;
- (i) to incite a person to commit an offense in those cases in which, if said incitement had not existed, said person would not have committed or would not have intended to commit the offense;
- (j) malicious persecution;
- (k) slander, libel or defamation;
- (l) misrepresentation or [deception];
- (m) use of false evidence which links a person to an offense;
- (n) to begin or continue an ostensible, notorious and intense vigilance or investigation of a person, when due to these characteristics it loses its effectiveness as a prudent and discreet police investigation mechanism, or
- (o) to illegally or unreasonably obstruct, hinder or interrupt the lawful and peaceful exercise of freedom of speech, press, assembly and the freedom of petition in thoroughfares or public places.

For the purposes of the provisions in the first paragraph of this section, it shall be understood that the authority empowered to penalize a public officer has not done so if said authority affirmatively determines that it exonerates said officer, or if after making a charge or complaint against a public officer or if after the occurrence of the acts which might have given rise to such charge or complaint, one hundred twenty (120) days elapse without the authority empowered to penalize having imposed disciplinary measures or exonerated said public officer. After the lapse of the said one hundred (120) days, the power to penalize said

officer shall exclusively pertain to the Commission. However, on petition of the authority empowered to penalize, the Commission shall grant additional extensions for terms of thirty (30) days each, provided said extensions are requested before the expiration of the original term of one hundred twenty (120) days or of the extension granted, and it is established that there is a good reason therefor. Provided, That said term of one hundred twenty (120) days exclusively applies to cases where there has been misuse or abuse of authority.

(2) It shall act as an appellate entity with exclusive jurisdiction to hear and resolve appeals filed by public officers covered by this Act when the chief or director of the body or dependency in question has imposed any disciplinary measure in connection with the acts covered by this Act, or with slight faults in which an admonishment or suspension from employment and pay has been imposed, or serious faults in the case of members of the Commonwealth or Municipal Police, or from other agencies with similar regulations. It may also hear appeals presented by any citizen who is not satisfied with the decision of said officer.

Both the defendant officer and the plaintiff citizen who filed a formal complaint before an authority empowered to sanction shall have a term of thirty (30) days to appeal before the Commission, as of the notice of the decision of the issuing authority.

After holding the corresponding hearing, pursuant to the provisions of subsection (3) of Section 3 of this Act, the Commission may confirm, revoke, or modify the ruling or action appealed, or may impose any sanction that the authority empowered to sanction may have imposed. Notwithstanding the above, the Commission may modify its ruling in order to increase or aggravate a sanction only when, from an analysis of the record or the presentation of evidence before such entity or both, it arises that the chief or director of the dependency has imposed a punishment that, reasonably, does not fit the facts that gave rise to the complaint that has been presented.

(3) It shall make recommendations to the Governor and to the Legislature on amendments or new legislation it may deem necessary or proper to attain the most effective enforcement of the laws and the maintenance of public order in the Commonwealth of Puerto Rico, as well as the best operation of the entities and dependencies of the Government which are in charge of enforcing the law and maintaining public order and to protect the life and properties of the citizens.

(4) It shall render an annual report to the Governor and to the Legislature on August 31 of each year in which there shall be included the recommendations deemed necessary by the Commission. The Commission shall also render such special reports which it might deem convenient and those that the Governor may request.

**Section 3. — [Commission—Authority]** (1 L.P.R.A. § 173)

In the exercise and fulfillment of the previous functions, powers and duties, the Commission shall be authorized to:

- (1) Carry out any investigation authorized by this Act, in any place in the Commonwealth of Puerto Rico.
- (2) Hold the meetings it may deem necessary.
- (3) Hold public or private hearings, which may be presided over by any Commissioner designated by the Chairperson and attended by the interested parties.

The hearings before the Commission shall be public, but may be held in private by petition of the accused official, or if so determined by the Commission in benefit of the public interest. No evidence or testimony given in a private session before the Commission shall be made public, without its consent.

The Commission shall keep a record of all its proceedings.

Any party injured by a final decision of the Commission may request the Commission to reconsider said decision, within fifteen (15) days following the notice thereof. The Commission may flatly reject the petition, or may assign it for a hearing.

The decisions of the Commission may be reviewed by the Court of First Instance, San Juan Part, through a motion presented for said purpose, within thirty (30) days from the notice of the decision of the Commission. Said appeal for review shall be limited to questions of law and to the determination of whether or not substantial evidence exists to sustain the findings of fact of the Commission. The rules of evidence that prevail in the courts of justice shall not be binding upon any proceeding instituted before the Commission under the provisions of this Act.

The cases in which the Commission intervenes may be heard by three or more members of the Commission.

The Commission shall have exclusive jurisdiction to act as a body in the cases specified below:

- (1) In cases in which the nominating authority or its authorized representative has imposed any disciplinary sanction or measure to an official employed by the Commonwealth or Municipal Executive Branch authorized to make arrests, in connection with actions where he or she is accused of having misused or abused authority as defined by subsection (1) of Section 2 of this Act, and
- (2) in cases in which the Superintendent of the Police or his/her authorized representative has imposed any disciplinary sanction or measure to a member of the Police in connection with the commission of serious faults, as provided by Act No. 53 of June 10, 1996, as amended [25 L.P.R.A. §§ 3101 et seq.], known as the "Puerto Rico Police Act" and its regulations, or in case the Commissioner of the Municipal Police of a municipality or his/her authorized representative has imposed any disciplinary sanction or measure to a member of the Municipal Police as provided by Act No. 19 of May 12, 1977, as amended [21 L.P.R.A. §§ 1061 et seq.], known as the "Municipal Police Act". All other cases, including separation from service for a probation period, layoffs, transfers and other actions related with essential areas as to the principle of merit shall be heard before the Appeals Board of the Personnel Administration System, which shall have the primary jurisdiction.

**Section 4. — [Effectiveness of other entities] (1 L.P.R.A. § 174)**

Nothing herein provided shall be construed as invalidating, repealing or limiting any power, duty or faculty of any department, agency, board, commission or any other entity or dependency of the Commonwealth of Puerto Rico except the Police Commission, which shall cease to exist on the taking of effect of this act. Section 11 of Act No. 77 of June 22, 1956, is hereby repealed.

**Section 5. — [Oaths, testimonies and summonses]** (1 L.P.R.A. § 175)

The Commission and each member of the Commission shall be empowered to take oaths and testimonies. In addition, the Commission may require the attendance and testimony of witnesses and the presentment of any books, papers, records, documents or other evidence relevant to any matter before its consideration.

Every summons issued by the Commission, its Secretary or by any of its members shall bear the seal of the Commission and may be served anywhere within the Commonwealth. Certificates issued by the Commission on request of interested parties shall bear said seal.

All persons summoned and who duly appear as witnesses shall receive for each day's attendance a sum equal to that received by witnesses appearing before the courts of justice.

**Section 6. — [Appearance of witnesses; proceedings; civil contempt]** (1 L.P.R.A. § 176)

Whenever a witness summoned by the Commission fails to appear and testify or to produce the evidence required, or when he refuses to answer any question in connection with any study or investigation carried out by the Commission in the discharge of its functions, the Chairman of the Commission may request the assistance of the San Juan Part of the Court of First Instance of Puerto Rico to require the attendance and the testimony of such witness or the production of the required evidence, as the case may be. The Secretary of Justice shall offer to the Commission the legal assistance necessary for such purposes.

After the petition is filed in the San Juan Part of the Court of First Instance of Puerto Rico, said court shall issue a summons requiring and directing the witness to appear and testify or to produce the evidence requested, or both, before the Commission, and disobedience of the order of the court shall be punished as for contempt.

**Section 7. — [Evidence]** (1 L.P.R.A. § 177)

At the request of the Commission, the San Juan Part of the Court of First Instance may direct that any evidence produced in any public or private hearing held in connection with any investigation carried out by the Commission be retained by, or be delivered and placed under the custody of the Commission. Said evidence shall not be removed from the custody of the Commission except by another order of the court, issued after five days' notice to the Commission or at its request, or with its consent.

**Section 8. — [Immunity]** (1 L.P.R.A. § 178)

The Commission may grant immunity to any person examined during the course of any investigation or hearing held by the Commission, but only after offering the Secretary of Justice the opportunity of expressing the objections which he might have in granting such immunity, and always with his consent.

No person examined under oath in any investigation or hearing held by the Commission, to whom immunity has been granted in accordance with the provisions of the previous paragraph, may refuse to testify or to present any document or other evidence on the basis that his testimony or the presentation of the required evidence would expose him to criminal

prosecution. No person to whom the Commission has granted immunity shall be criminally prosecuted because of any transaction, matter or thing in relation with which he has been forced to declare or to present evidence after having claimed his privilege of not having to testify against himself, except that a person who so testifies shall not be exempt from prosecution and punishment, if the proceeding is based on any false statement made in said examination.

**Section 9. — [Use of services and facilities; cooperation]** (1 L.P.R.A. § 179)

The Commission, in the discharge of its duties, may use the services and facilities offered by private institutions and persons as well as by the departments, agencies, instrumentalities and other organizations of the Government of Puerto Rico, the municipalities and its political subdivisions. All such government entities shall cooperate with and shall offer their services and facilities to the Commission, at its request or at the petition of the Governor.

Likewise, the Commission may contract or appoint any officer or employee of the Government of Puerto Rico or of any of its departments, agencies, instrumentalities, organizations or political subdivisions where said officer or employee is rendering service. It shall be the duty of the appointing authority, in such case, to retain for said officers or employees, their offices or employments as long as the Commission makes use of their services.

The Commission is further authorized to contract, without being subject to the provisions of Section 177 of the Political Code [3 L.P.R.A. § 551], the services of any officer or employee of the Government of Puerto Rico or of any of its departments, agencies, instrumentalities, organizations or political subdivisions, and to pay for their additional services which they may render to the Commission outside of their regular hours of service.

The Commission, with the approval of the Governor, may entrust any department, agency, bureau, division, authority, instrumentality, organization or political subdivision of the Government of the Commonwealth of Puerto Rico, to carry out any study or investigation, or any phase or part thereof, or to perform any other kind of work which might be necessary in the discharge of its functions. The government organization receiving such commission shall give the greatest priority as possible to the execution of the study, investigation or work which has been entrusted to it. The government organization which has been entrusted to carry out the study, investigation or work may request from the Commission and obtain from the latter, if in its judgment it is deemed necessary, upon the previous authorization of the Governor, a transfer of funds for the amount deemed reasonable by the Commission.

**Section 10. — [Regulations]** (1 L.P.R.A. § 18)

The Commission shall adopt the necessary regulations for the proper carrying out of its functions, in accordance with the provisions of Act No. 112 of June 30, 1957, known as the "Rules and Regulations Act of 1958 [*Note: Actual Act No. 170 of August 12, 1988 known as "Uniform Administrative Procedure Act"*](3 L.P.R.A. §§ 2101 et seq.), which shall include the rules on the procedures for the presentation of charges and appeals.

**Section 11. — [Office of the Commission; Executive Director]** (1 L.P.R.A. § 181)

To carry out its functions, the Commission shall establish and organize an office appropriate to its needs. It shall also appoint an Executive Director who shall be responsible for organizing and directing the work of the office, and who, upon the previous authorization of the Commission, shall appoint the office personnel. The Executive Director shall be comprised within the Non-Competitive Service of the Commonwealth Government.

Furthermore, the Director may contract, upon the previous approval of the Commission, the service of experts and consultants. The Director shall administer the budget and shall be responsible to the Commission for its management, through its Chairman.

**Section 12. — [*Per diems* and reimbursements]** (1 L.P.R.A. § 182)

The members of the Commission shall be entitled to a *per diem* equal to the minimum per diem established in Act No. 97 of June 19, 1968, as amended [2 L.P.R.A. §§ 28 et seq.], for the members of the Legislature, for each meeting they attend or for each day in which they conduct any official business entrusted by the Commission or its Chairperson in relation to the duties imposed by this Act.

All members of the Commission shall furthermore be entitled to be reimbursed for the expenses necessarily incurred in the discharge of their official duties, subject to the regulations established to that effect by the Commission and the applicable regulations of the Department of the Treasury.

Any member of the Commission who receives a pension or annuity from any retirement system of the Government of Puerto Rico or from any of its agencies, dependencies, public corporations or political subdivisions, may receive the per diem without his/her right to the retirement pension or annuity being affected.

**Section 13. — [Appropriations]** (1 L.P.R.A. § 183)

The Commission is hereby authorized to receive and administer funds derived from legislative appropriations, from the transfer of funds, from other agencies or dependencies of the Government and from contributions of any kind.

For its normal operations, in accordance with its work program, the corresponding appropriations shall annually be made within the general budget of expenses of the Government.

**Section 14. — [Penalties]** (1 L.P.R.A. § 184)

Any person who voluntarily disobeys, hinders or obstructs the Commission or any of its authorized agents in the discharge of their duties, obstructs the holding of a hearing, or violates any of the provisions of this Act or of the regulations adopted pursuant thereto, shall incur in a misdemeanor and upon conviction shall be punished by a fine which shall not exceed five hundred dollars (\$500) or by imprisonment in jail for a term not to exceed six (6) months or by both penalties in the discretion of the court.

**Section 15.** — [Transfers] (1 L.P.R.A. § 185)

All the personnel, equipment, records and unused funds from the Police Commission are hereby transferred to the Commission.

**Section 16.** — The sum of two hundred and fifty thousand (250,000) dollars is hereby appropriated for operation expenses of the Commission during fiscal year 1972-73.

**Section 17.** — [Effectiveness] (1 L.P.R.A. § 171 note)

This act shall take effect ninety (90) days after its approval, but it shall not affect the cases or matters pending before other organizations on the date of effectiveness, except those under the jurisdiction of the Police Commission, which shall be transferred to the Commission hereby created, shall be judged and decided in accordance with the law and the regulations under which they were initiated.

**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.