

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
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EOM

Bill No. 214-31(CDR)

Introduced by:

V. Anthony Ada
B.J.F. Cruz
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AN ACT TO AMEND §40105(b) OF 7GCA, TO AMEND §§30.80, 30.80.1, 30.80.2, 30.80.3 OF 8GCA AND TO REPEAL §30.80.4 OF 8GCA RELATIVE TO DEFERRED PLEAS FOR DOMESTIC VIOLENCE ABUSERS.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that
3 statistics from the *Bureau of Justice, The National Coalition Against Domestic*
4 *Violence, The American Bar Association* and most national victims' support groups
5 show that abusers who inflict serious bodily injury or death upon a spouse,
6 domestic partner or other family member have a history of escalating and unabated
7 abusive behavior. These organizations have also found that if first-time offenders
8 receive counseling, education and in some cases, clinical treatment; they are less
9 likely to reoffend.

10 Many states and Guam have diversion programs that allow certain first-time
11 domestic violence abusers to obtain such counseling, education and treatment in
12 exchange for expungement of the arrest record, waiver of prosecution and
13 elimination of prison sentences and criminal records relating to such first offense.
14 The problem that many states have found with diversion program is that in 10% to
15 30% of these cases, the abusers fail to complete the diversion requirements within
16 the two to three years normally allowed. Prosecutors have found it difficult if not
17 impossible to get convictions on cases that are two to three years old.

1 Many states have found a much higher completion rate of domestic abuser
2 rehabilitation programs where the abusers are allowed to enter a “deferred plea”.
3 In such states, abuser enter a deferred guilty plea that is vacated once he completes
4 the requirements of his deferred plea agreement. If he fails to complete the
5 agreement, the court accepts the guilty plea. Deferred plea legislation has faced
6 opposition from defense attorneys in states contemplating changing their diversion
7 programs to deferred plea agreements. The opponents have countered that
8 deferred plea programs will lead to more accused abusers seeking to “take their
9 chances at trial” rather than entering a deferred admission of guilt. By and large,
10 however, communities, district attorneys and victims rights groups have largely
11 embraced such legislation.

12 I Liheslaturan further finds that obtaining justice for victims of domestic
13 violence largely outweigh the desires of their abusers.

14 It is the intent of I Liheslatura to replace Guam’s domestic violence
15 diversion program with a deferred plea program.

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18 **Section 2.** 40105(b) of 7GCA is *amended* to read as follows

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20 (b) Any protection order or approved consent agreement shall be for a fixed period
21 of time as the court deems appropriate ~~not to exceed one year~~. The court may
22 amend its order or agreement at any time upon subsequent petition or motion filed
23 by either party.

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25 **Section 3.** Section 30.80 of 9GCA is *amended* to read as follows:

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27 **§30.80. Deferred Plea Diversion Eligibility.**

1 Notwithstanding any other provision of law, and upon the determination of the
2 judge, this §30.80 shall apply whenever a case is before the court upon an
3 accusatory pleading for any criminal act against a family or household member as
4 defined in subsection (b) of §30.10 of this title.

5 (a) The following persons are ineligible for the deferred plea diversion
6 process:

7 1. A defendant who has a felony conviction for any offense involving
8 violence within seven (7) years prior to the alleged commission of the
9 charged offense;

10 2. A defendant ~~who~~ whose plea has been deferred ~~diverted~~ pursuant to
11 this section within five (5) years prior to the commission of the charged
12 offense whether or not the prior deferred plea diversion resulted in
13 expungement;

14 3. A defendant who has been sentenced for a violation of §30.40 of
15 this Chapter within one (1) year prior to the alleged commission of the
16 charged offense; or

17 4. A defendant whose current charge involves serious bodily injury as
18 defined in subsection (c) of §16.10 of this Title, or criminal sexual conduct
19 involving sexual penetration as defined in item (9) of subsection (d) of
20 §25.10, unless the court finds that due to unusual circumstances deferral
21 ~~diversion~~ of the criminal proceedings is manifestly in the interest of justice.

22 (b) The fact that a defendant is not made ineligible by subsection (a) of this
23 §30.80 does not automatically entitle a defendant to the deferred plea diversion
24 process.

25 (c) The prosecuting attorney shall determine whether the defendant is
26 ineligible for deferral ~~diversion~~ by reason of any of the factors set forth in
27 subsection (a) of this §30.80. If the prosecutor finds that the person is not

1 ineligible, and will agree to a deferred plea diversion, the prosecutor shall notify
2 the defendant.

3 (d) If the prosecutor finds that the defendant is ineligible, or if the prosecutor
4 will not agree to a deferral diversion although the defendant is not excluded by
5 reason of subsection (a) of this §30.80, the prosecutor shall notify the defendant.

6 (e) Any defendant who is not specifically ineligible for the deferral diversion
7 process pursuant to subsection (a) of this §30.80 may apply to the court, by noticed
8 motion for an order granting a deferred plea diversion. The prosecuting attorney
9 may oppose this application.

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11 **Section 3.** Section 30.80.1 of 9GCA is *amended* to read as follows:

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13 **§30.80.1. Deferred plea Diversion Hearing.**

14 (a) Upon noticed motion, the court shall hold a hearing and, after
15 consideration of any and all information the court believes to be relevant to its
16 decision, the court shall determine if the defendant consents to further proceedings
17 under this §30.80.1 and waives his or her right to a speedy trial, and if the
18 defendant should be ~~diverted from~~ allowed to enter a deferred plea in the criminal
19 proceedings and referred for an education and treatment program directed
20 specifically to the violent conduct of the defendant. The court, in determining the
21 defendant's eligibility for a deferred plea diversion, shall consider the nature and
22 extent of the injury inflicted upon the victim, any prior incidents of family violence
23 by the defendant, and any factors which would adversely influence the likelihood
24 of successful completion of the deferred plea agreement diversion process. If the
25 court does not deem the defendant a person who would be benefited by a deferred
26 plea diversion, or if the defendant does not consent to participate, the criminal
27 proceedings shall continue as in any other case. If the court accepts orders a

1 ~~deferred plea defendant to be diverted~~, the court shall make inquiry into the
2 financial condition of the defendant and upon a finding that the defendant is able in
3 whole or part to pay the expense of such counseling the court may order him or her
4 to pay for all or part of such expense.

5 Nothing in this subsection shall prohibit the placement of a defendant in
6 another appropriate counseling program if the court determines that there is no
7 available education and treatment program.

8 (b) At such time that the defendant's plea in a case is deferred ~~diverted~~, any
9 bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of him
10 or her shall be exonerated, and the court shall enter an order so directing.

11 (c) The period during which further criminal proceedings against a person
12 may be diverted pursuant to this section shall be no less than one (1) year, and no
13 more than three (3) years if a misdemeanor is charged, and no more than five (5)
14 years if a felony is charged.

15 (d) The court shall set forth in writing or state on the record its reason for
16 granting or denying a deferred plea ~~diversion~~. The court's decision in such a matter
17 shall be final and shall not constitute an appealable order.

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20 **Section 4.** Section 30.80.2 of 9GCA is *amended* to read as follows:

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22 **§30.80.2. Enforcement Reinstitution of a deferred plea Criminal Proceedings;**
23 **Dismissal.**

24 If it appears to the prosecuting attorney, the court or the probation
25 department that the deferred plea ~~divertee~~ under § 30.80.1 of this Chapter is
26 performing unsatisfactorily in the assigned program, or that the deferred pleader
27 ~~divertee~~ is not benefiting from education and treatment programs, or that he or she

1 has been convicted of any offense involving violence, after notice to the deferred
2 pleader divertee, and upon motion by the prosecuting attorney or on the court's
3 own motion, the court shall hold a hearing to determine whether the deferred
4 pleader shall be sentenced accordingly ~~eriminal proceedings should be reinstated~~.
5 If the court finds by substantial evidence that the deferred pleader divertee is not
6 performing satisfactorily in the assigned program, or that the deferred pleader
7 divertee is not benefiting from a deferral diversion, or the court finds that the
8 deferred pleader divertee has been convicted of a crime as set out above, the
9 criminal case shall be referred back to the court for enforcement resumption of the
10 plea ~~eriminal proceedings~~. If the deferred pleader divertee has performed
11 satisfactorily during the period of diversion, at the end of the period of deferral
12 diversion, the criminal charges shall be dismissed upon motion or application of
13 the defendant.

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16 **Section 5.** Section 30.80 of 9GCA is *amended* to read as follows:

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18 **§30.80.3. Use of Arrest Record Following Successful Completion of Deferred**
19 **Plea Agreement Diversion Program.**

20 Any records filed with the Guam Police Department and the Office of the
21 Attorney General, Prosecution Division, shall set out the disposition of those cases
22 diverted pursuant to § 30.80.1 of this Chapter. Upon successful completion of a
23 deferred plea agreement diversion program the arrest upon which the deferral of
24 plea diversion was based shall be expunged as provided by Chapter 11 of Title 8,
25 Guam Code Annotated. The deferred pleader divertee may indicate in response to
26 any question concerning his or her prior criminal record that he or she was not
27 arrested or his plea was deferred diverted for such offense. A record pertaining to

1 an arrest resulting in successful completion of the deferred plea agreement
2 ~~diversion process~~ shall not, without the deferred pleader's divertee's consent, be
3 used in any way which could result in the denial of any employment, benefit,
4 license, or certificate. Failure to affirm or acknowledge a deferred plea, following
5 successful completion of a deferred plea agreement, on any application for
6 employment, benefit, license, or certificate or in any affidavit is not perjury or an
7 unsworn falsification.

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9 **Section 6.** Section 30.80.4 of 9GCA is *repealed*.

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11 **Section 7.** Effective Date. This Act shall be effective one hundred eighty (180)
12 days after enactment.