



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, GU 96932
Tel: (671) 472-8931 • Fax: (671) 477-4826 • Email: governor@guam.gov

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

Honorable Judith T. Won Pat, Ed.D
Speaker
I Mina' Trenta Na Liheslaturan Guahan
155 Hessler Street
Hagåtña, Guam 96910

Handwritten notes and stamps including '30-10-6731', 'AUG 25 2010', '2010 AUG 26 AM 8:26', and a signature.

Dear Speaker Won Pat:

Submitted herewith is Bill No. 418-30 (COR), "AN ACT TO AMEND §§85.10, 85.14 AND 85.26 OF CHAPTER 85, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE COMPOSITION OF MEMBERS TO THE TERRITORIAL PAROLE BOARD," which I have vetoed.

After over 30 years of processing parole applications through an administrative process, Bill No. 418-30 proposes to revamp the composition of the Parole Board solely because of the misplaced perception that the three retired law enforcement officers currently serving on the board membership indicates a penitentiary rather than rehabilitation philosophy. The Department of Corrections ("DOC") has evolved from its former Guam Penitentiary. Incarceration at DOC is a sentence imposed as punishment but their time is spent toward rehabilitating their behavior in preparation for release. The Parole Board does not have jurisdiction over rehabilitative and educational programs within the Department of Corrections. Depending upon an inmate's classification or eligibility to participate in the programs, the board may recommend that an inmate attend and complete rehabilitative and educational programs, but compliance is not mandatory. Unfortunately, there are limited programs being administered at DOC. Yet, the Parole Board has partnered with organizations in the community to assist DOC in reforming inmates so that may successfully transition and reenter the community.

Over the past 8 years, it has been a challenge to find suitable individuals willing to serve on the Parole Board. The current law requires the membership be persons by their knowledge and experience prepared to perform efficiently the duties of the board. These individuals are also confirmed by the Legislature. Now, after 30 years of appointed and confirmed members performing the duties of the board, Bill No. 418-30 proposes to narrow the qualifications required to serve as a member of the board. This will only exacerbate the short list of qualified individuals willing to serve on the Parole Board. Further, the bill requires the Attorney General's office to "vet" all nominations. Vet as reflected by quotation marks in the legislation is a term of art which is undefined in the legislation. As such, its application has yet to be determined and is an additional element of uncertainty.

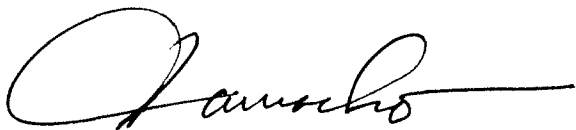
As noted in the legislation, the Parole Board has functioned and carried out the mandates provided by law for over 30 years. Since 1978, there have been many lawsuits filed against the Parole Board and the board prevailed in nearly all of them. The candor afforded by the current process allows the board to

ascertain the facts and circumstances pertaining to the inmate in order to make an informed decision regarding the inmate's conditions that impacts the safety of community. The bill proposes to limit the board's ability to adequately discern the cases through the promulgation of rules to provide for a public process and unfettered access to information. However, the section is contrary to 9 G.C.A. §85.62. While in certain circumstances disclosure may be proper, unlimited access will impede the board's duty to investigate a parole application and balance it against the risk to public safety. Unfortunately, Bill No. 418-30 in its current form does not limit disclosure if the information is confidential information or if there are safety considerations. A major concern is the well-being and safety of the victims and those who speak out against a person seeking parole. Attendees should also be screened for potential security or safety concerns. Board members will not be willing to risk their lives and continue as members if they are subjected to confrontation as the legislation states.

Also many family members while outwardly supporting the release of a family member inwardly may have major concerns and a more intimate, less intimidating environment would allow these concerns to be voiced without fear of reprisal or retribution. A support structure is vital for a parolee to succeed upon release. The ability of the Board to gain truthful and honest answers relies on the ability of those to be able to speak or submit testimony in confidence. The lack of anonymity will chill the testimony that the parole board receives and will also cause the board to be reluctant to deny parole against an inmate if they have the ability to confront the board. The end result may lead to inmates being released into the public while still posing a degree of danger to the public. We have already seen the chilling effect that this bill has had as the Chairman of the Board has resigned after serving 18 years and other members of the board have indicated that they will resign as well.

This problem of not being able to fill a new parole board and impeding the parole process, which is administrative and not adjudicatory in nature, precludes me from signing this legislation in law.

Sinseru yan Magâhet,

A handwritten signature in black ink, appearing to read 'F. Camacho', with a long horizontal flourish extending to the right.

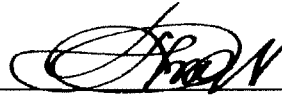
FELIX P. CAMACHO
I Maga' Lâhen Guahan
Governor of Guahan

Attachment

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 418-30 (COR), "AN ACT TO AMEND §§85.10, 85.14 AND 85.26 OF CHAPTER 85, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE COMPOSITION OF MEMBERS TO THE TERRITORIAL PAROLE BOARD", was on the 13th day of August, 2010, duly and regularly passed.



Judith T. Won Pat, Ed. D.
Speaker

Attested:

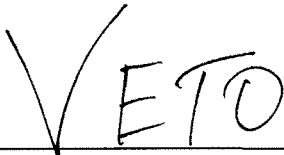

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 13 day of Aug, 2010, at 5:30 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

Bill No. 418-30 (COR)

As amended on the Floor.

Introduced by:

Adolpho B. Palacios, Sr.

T. C. Ada

V. Anthony Ada

F. B. Aguon, Jr.

F. F. Blas, Jr.

E. J.B. Calvo

B. J.F. Cruz

J. V. Espaldon

Judith P. Guthertz, DPA

T. R. Muña Barnes

v. c. pangelinan

R. J. Respicio

Telo Taitague

Ray Tenorio

Judith T. Won Pat, Ed.D.

**AN ACT TO *AMEND* §§85.10, 85.14 AND 85.26 OF
CHAPTER 85, TITLE 9, GUAM CODE ANNOTATED,
RELATIVE TO THE COMPOSITION OF MEMBERS TO
THE TERRITORIAL PAROLE BOARD.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that Public Law 7-49 created the Territorial Parole Board consisting of five (5)
4 members appointed by *I Maga'lahi* and with the advice and consent of *I*
5 *Liheslatura*. Moreover, *I Liheslatura* finds that Public Law 27-104, which
6 amended Public Law 7-49, provides that any person holding an elected office *shall*

1 not be eligible to serve on the Territorial Parole Board. In a span of forty-one (41)
2 years, the only change to the composition of the Territorial Parole Board is the
3 reference language cited above.

4 Much has evolved in the philosophy, treatment and rehabilitation of
5 offenders through programs supervised and managed by social workers and other
6 professionals involving parole, probation and penal custody. *I Liheslatura* finds
7 that for inmates eligible for parole, parole is granted by the discretionary action of
8 the Territorial Parole Board. The Board evaluates an array of information about an
9 inmate and makes a prediction whether he or she is ready to be re-integrated back
10 into society. While an inmate is incarcerated, government officials are charged in
11 preparing and rehabilitating the inmate with the full hope of parole. This process
12 requires a holistic approach in evaluating if an inmate is capable to live in society
13 and be a productive member. This is ultimately a reflection of the change in penal
14 philosophy from penitentiary to correctional rehabilitation. The members of the
15 Territorial Parole Board should reflect this penal philosophy and should be
16 progressively qualified in certain academic disciplines or have a diverse
17 occupational background to best articulate their informed decision whether to grant
18 or deny parole.

19 *I Liheslaturan Guåhan* finds that under the current law providing for a five
20 (5)-member Parole Board, three (3) are retired law enforcement officers – two (2)
21 retired from the Guam Police Department, and one (1) retired from the Department
22 of Corrections. Three (3) out of five (5) were career law enforcement staff officers
23 whose indoctrination into their respective profession shaped their criminal justice
24 values that embrace the philosophy of “penitentiary” vs. “rehabilitation”. It
25 appears then that the current penal philosophy of the Parole Board is to punish.
26 Under this condition, it becomes very difficult for an inmate to have a fair and
27 balanced review and consideration of his parole application.

1 Therefore, it is the intent of *I Liheslaturan Guåhan* to provide for a balance
2 in the correctional and rehabilitation philosophy of the Territorial Parole Board by
3 amending §§85.10 and 85.14, of Chapter 85, Title 9 of the Guam Code Annotated.

4 **Section 2.** §85.10 of Chapter 85 of Title 9, Guam Code Annotated, is
5 hereby *amended* to read:

6 “**§85.10. Territorial Parole Board Created.** There is in the
7 Executive Branch of the government of Guam, a Territorial Parole Board,
8 hereinafter referred to as the Board, consisting of seven (7) members
9 appointed by *I Maga’lahi* [the Governor], by and with the advice and
10 consent of *I Liheslatura* [the Legislature]. Only persons, who by their
11 knowledge and experience are prepared to perform efficiently the duties of
12 the Board as hereinafter provided, *shall* be eligible for such appointment.
13 Any person holding an elected office *shall not* be eligible to serve on the
14 Territorial Parole Board.

15 (a) The composition of the Board members *shall* be comprised of the
16 following minimum background and experience:

17 (1) at least two (2) Board members *shall* have at least ten (10)
18 years in law enforcement work, *or* a baccalaureate degree in
19 criminal justice *or* juvenile justice *or* professional experience
20 in these areas of study;

21 (2) at least two (2) Board members *shall* have at least a
22 baccalaureate degree *or* higher from an accredited U.S.
23 institution of higher education in social work, sociology *or*
24 psychology *or* a medical degree from an accredited U.S.
25 institution; and

26 (3) the three (3) remaining Board members *shall* have at least ten
27 (10) years of experience in human resources development, or

1 legal background or professional experience in these areas of
2 study, or any person of good moral character.

- 3 (4) Nominations for candidates for the Parole Board *shall* be
4 received from the community, civic organizations, educational
5 institutions, individuals, and village mayors. It *shall* be the
6 responsibility of the Attorney General to publicly announce,
7 receive, and to “vet” all nominations, and forward a list of
8 qualified and interested candidates to the Office of *I*
9 *Maga’lahi* from which to choose for appointment.”

10 **Section 3.** §85.14. of Chapter 85 of Title 9, Guam Code Annotated, is
11 hereby *amended* to read:

12 “§85.14. **Chairman Elected: Meetings at Least Monthly.** The
13 Board *shall* elect a Chairman from among its members. The Chairman *shall*
14 be elected by its members every two (2) years. The Board *shall* meet
15 regularly at least once a month. Special meetings may be called by the
16 Chairman. *Not less than* four (4) voting members present *shall* constitute a
17 quorum for the transaction of business, and the affirmative vote of four (4)
18 members present *shall* be required to make any action of the Board valid.
19 *No* action *shall* be taken by the Board at any meetings *or* hearings, unless a
20 quorum is present.”

21 The election for Chairman from among its members *shall* follow upon
22 enactment of this Act.

23 **Section 4.** §85.26 of Chapter 85 of Title 9, Guam Code Annotated, is
24 hereby *amended* to read:

25 “§85.26. **Board: General Powers.** The Board is authorized to
26 release on parole any person confined in any penal *or* correctional institution
27 of Guam, and to revoke parole *or* discharge from parole any parolee as

1 provided in Article 5 (commencing with §80.70) of Chapter 80. The Board
2 *shall* adopt such rules and procedures *not* inconsistent with law as it may
3 deem proper *or* necessary to carry out its duties, and *shall* be in accordance
4 with the Open Government Law.

5 (1) Such rules and regulations *shall* include, but *not* be limited to
6 provisions of Title 5 GCA §§ 8103 and 8111, the Open Government Law,
7 the use of the term “inmate” as opposed to “prisoner”; the use of Executive
8 Session for voting on applications; the recusal of members due to conflicts;
9 the authorized presence of the media; the access of inmate to the pre-parole
10 investigation report, as well as the decision of the Department of
11 Corrections, whether supporting or *not* supporting parole; the right of an
12 inmate to have supporters present during the inmate’s interview by the
13 board; the right of an inmate to have legal representation or other advisor
14 present during the inmate’s interview by the Board, and the attorney’s right
15 to address the Board in the inmate’s presence; the right to receive minutes of
16 the hearing, as well as audio recordings; the right to receive, in writing,
17 specific reasons for parole denial and deficiencies to address in preparation
18 for a future application; the right to apply again in six (6) months as
19 mandated by 24 GAR §2108, (Parole Board Regulations 1997) which states
20 inmates who have their parole application denied may reapply every six (6)
21 months; and, finally, a detailed description of an appeal process.

22 (2) Such rules and procedures to be adopted by the Parole Board
23 *shall*, be subject to the Guam Administrative Adjudication Law, Title 5
24 GCA §9100, et. Seq.”

25 **Section 5. Severability.** *If* any provision of this law or its application to
26 any person or circumstance is found to be invalid or contrary to law, such
27 invalidity shall *not* affect other provisions or applications of this law which can be

- 1 given effect without the invalid provisions of applications, and to this end the
- 2 provisions of this law are severable.