

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

NOV 27 2013

Honorable Judith T. Won Pat, Ed.D
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

32-13-1011
Office of the speaker
Judith T. Won Pat, Ed. D.
Date 11.27.13
Time 5:12 PM
Received by: [Signature]

2013 NOV 29 AM 8:29
[Signature]

Dear Madame Speaker:

Although I understand the concern for persons who are legally presumed innocent until proven guilty, information about whether a person was arrested is already in the public domain. The police blotter is regularly published in the newspaper. An arrest record does not disclose any information not already public.

Further, just because a person who is arrested isn't convicted, it doesn't mean there is no longer any need for concern, or that the arrest is never relevant to a person's employment. This legislation wants unconvicted arrestees to have the opportunity to get a job. What about the nursery school owner who wants to make sure that he or she isn't hiring someone with a history of arrests for child molestation, regardless of conviction; or the bank that wants to make sure it isn't hiring someone with a history of arrests for theft and embezzlement?

I'm aware that there was testimony provided to support this bill stating that consideration of an arrest record violates the Civil Rights Act. This testimony, however, shows either a lack of understanding of the law or an intent to deceive. Per federal Equal Employment Opportunity Commission (EEOC) guidelines on the enforcement of the Civil Rights Act:

"An arrest . . . may in some circumstances trigger an inquiry into whether the conduct underlying the arrest justifies an adverse employment action. [The Civil Rights Act] calls for a fact-based analysis to determine if an exclusionary policy or practice is job related and consistent with business necessity. Therefore, an exclusion based on an arrest, in itself, is not job related and consistent with business necessity. Although an arrest record standing alone may not be used to deny an employment opportunity, an employer may make an employment

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decision based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question. The conduct, not the arrest, is relevant for employment purposes.”

Guam law already allows for the expungement of arrests if a person is acquitted or the statute of limitations for prosecution has expired. The sensible thing to do is to leave the current law intact and leave the onus on the person who wants to have his arrest record expunged. If that process has proven to be expensive or administratively onerous, then the legislature should consider ways to make it easier for that person to have his record to expunged—*after* acquittal or the expiration of the statute of limitations—rather than deny employers of potentially critical information in the hiring process.

I understand the burden on wrongfully accused persons, who may be denied employment opportunities, but I cannot in good conscience sign legislation that prevents a store or a bank from knowing that a person it is considering to handle cash receipts has multiple arrests for theft or embezzlement. I cannot agree to a law that prevents the Department of Public Works from knowing that a person it is considering as a school bus driver has been arrested for child molestation, or that denies that same information to a nursery school owner.

It is for these reasons that I am vetoing Bill 200-32.



EDDIE BAZA CALVO
Governor of Guam

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

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

This is to certify that **Substitute Bill No. 200-32 (COR)**, "AN ACT TO ADD A NEW § 77135 TO ARTICLE 1, CHAPTER 77 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO POLICE CLEARANCES, TO BE KNOWN AS THE "POLICE CLEARANCE CLARITY ACT OF 2013", was on the 12th day of November 2013, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

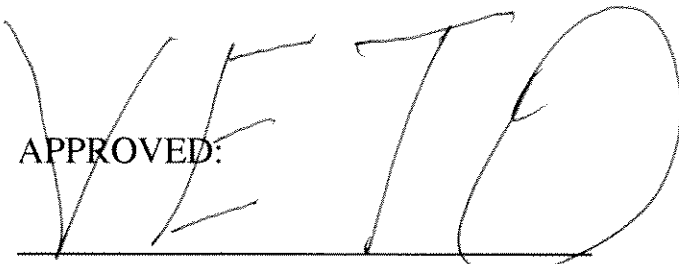
Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 15th day of Nov.,
2013, at 11:28 o'clock A.M.

APPROVED:



EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: NOV 27 2013



Assistant Staff Officer
Maga'lahi's Office

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 200-32 (COR)

As substituted by the Committee on General Government Operations
& Cultural Affairs.

Introduced by:

R. J. Respicio
T. C. Ada
B. J.F. Cruz
V. Anthony Ada
FRANK B. AGUON, JR.
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreddie
Tommy Morrison
T. R. Muña Barnes
Vicente (ben) C. Pangelinan
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW § 77135 TO ARTICLE 1,
CHAPTER 77 OF TITLE 10, GUAM CODE
ANNOTATED, RELATIVE TO POLICE CLEARANCES,
TO BE KNOWN AS THE “POLICE CLEARANCE
CLARITY ACT OF 2013.”**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslatura* finds that the
3 principle that all citizens are innocent until proven guilty is the foundation of our
4 system of justice and our democratic form of governance. Therefore, any clearance

1 report issued by a government agency involved in law enforcement, such as the
2 Guam Police Department, *shall* be in accordance with this principle.

3 *I Liheslatura* further finds that a majority of jurisdictions across the country
4 have enacted limits on the use of arrest histories when making employment
5 decisions. Under the United States Civil Rights Act, the Equal Employment
6 Opportunity Commission’s guidelines protect job seekers from discrimination
7 based on arrest histories. Employers are being advised to stop using arrest
8 information, and to comply with the specific rules for their jurisdictions, in order to
9 make it clear to all parties that the law maintains that an individual is innocent until
10 proven guilty.

11 *I Liheslatura* further finds that local police clearance reports are in need of
12 clarification, as evidenced by the Office of the Attorney General’s recent
13 “Information and Guidance” (Ref: GPD13-0361, dated August 23, 2013) submitted
14 to the Chief of Police, Guam Police Department, relative to the content of police
15 clearances.

16 According to such updated guidance and clarity on the subject of police
17 clearances relative to “arrest records and not to police reports that deal with traffic
18 accidents and other matters,” Assistant Attorney General David J. Highsmith notes
19 that “Such police reports are confidential pursuant to Title 10 GCA §77129 and
20 can be released only according to its terms.”

21 It is, therefore, the intent of *I Liheslatura* to add a new §77135 to Title 10,
22 Guam Code Annotated, relative to police clearances, based on the above
23 referenced guidance, in language that has been vetted by the Office of the Attorney
24 General.

25 **Section 2.** A new §77135 is *added* to Article 1, Chapter 77 of Title 10,
26 Guam Code Annotated, to read:

27 “§ 77135. Police Clearances *shall only* include the following

- 1 relative to arrests and police reports:
- 2 (a) Charges for which the arrestee is convicted.
- 3 (b) Charges for which a juvenile is convicted as an adult.
- 4 (c) The restrictions in this §77135 *do not* apply to the use by
- 5 federal and local law enforcement agencies of criminal history
- 6 records.”