



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

APR 30 2014

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

32-14-165
Date 5-2-14
Time 3:34 PM
Received by [Signature]
2014 MAY -2 PM 3:04

Dear Madame Speaker:

Transmitted herewith is Bill No. 273-32 (COR) "AN ACT TO REPEAL AND REENACT §70.35 OF CHAPTER 70, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO INVASION OF PRIVACY, CRIMINAL VOYEURISM AND VIDEO VOYEURISM" which I signed into law on April 28, 2014 as **Public Law 32-144**.

Senseramente,


EDDIE BAZA CALVO

1615

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

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

This is to certify that Substitute Bill No. 273-32 (COR), "AN ACT TO REPEAL AND REENACT §70.35 OF CHAPTER 70, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO INVASION OF PRIVACY, CRIMINAL VOYEUERISM AND VIDEO VOYEURISM," was on the 15th day of April, 2014, 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 16 day of April,
2014, at 1:10 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: APR 28 2014

Public Law No. 32-144

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

Bill No. 273-32 (COR)

As substituted by the Committee on Guam U.S. Military Relocation, Homeland Security, Veterans' Affairs, and the Judiciary, and the Author; and amended on the Floor.

Introduced by:

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

**AN ACT TO REPEAL AND REENACT §70.35 OF
CHAPTER 70, TITLE 9, GUAM CODE ANNOTATED,
RELATIVE TO INVASION OF PRIVACY, CRIMINAL
VOYEUERISM AND VIDEO VOYEURISM.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the community of Guam is disturbed that its laws have not kept pace with
4 audio, video and electronically digital camera technology which, though designed
5 to heighten the quality of life, can also be used for nefarious or perverse purposes.
6 Recently, a man, convicted for using electronic audio/video technology or cameras

1 to engage in surreptitious surveillance of women using restroom facilities, only
2 faced a misdemeanor penalty. The victims in this case suffered not only a gross
3 and severe invasion of their privacy, but a violation of their personal and physical
4 dignity, in addition to other psychological harm. *I Liheslatura* intends to address
5 this serious problem which bears in mind the need to balance privacy rights in
6 circumstances where surveillance may be legitimate. Thus, our criminal statutes
7 for invasion of privacy, or our version of criminal voyeurism, is in need of
8 updating and replacement.

9 **Section 2.** § 70.35 of Chapter 70 of Title 9, Guam Code Annotated, is
10 hereby *repealed* and *reenacted* to read as follows:

11 **“§ 70.35. Invasion of Privacy or Criminal Voyeurism and Video**
12 **Voyeurism; Penalty; Definitions.**

13 (a) A person commits a misdemeanor if, except in the execution of
14 a public duty or as authorized by law, the person intentionally or knowingly:

15 (1) trespasses on property for the purpose of subjecting
16 anyone to eavesdropping or other surveillance in a private place or in
17 a place where an individual has a reasonable expectation of privacy;

18 (2) peers or peeps into a window or other opening of a
19 dwelling or other structure adapted for sojourn or overnight
20 accommodations for the purpose of spying on the occupant thereof or
21 invading the privacy of another person with a lewd or unlawful
22 purpose, under circumstances in which a reasonable person in the
23 dwelling or other structure would not expect to be observed;

24 (3) trespasses on property for the sexual gratification of the
25 actor;

26 (4) installs or uses outside a private place any device for
27 hearing, recording, amplifying, or broadcasting sounds originating in

1 that place which would not ordinarily be audible or comprehensible
2 outside, without the consent of the person or persons entitled to
3 privacy therein;

4 (5) intercepts, without the consent of the sender or receiver, a
5 message or photographic image by telephone, telegraph, letter,
6 electronic transmission, or other means of communicating privately;
7 but this Subsection (5) *does not* apply to:

8 (A) overhearing of messages through a regularly
9 installed instrument on a telephone party line or an extension;
10 or

11 (B) interception by the telephone company, electronic
12 mail account provider, or telephone or electronic mail
13 subscriber incident to enforcement of regulations limiting use
14 of the facilities or incident to other operation and use;

15 (6) installs or uses, or both, in any private place or in a place
16 where an individual has a reasonable expectation of privacy, without
17 consent of the person or persons entitled to privacy therein, any means
18 or device for observing, recording, amplifying, or broadcasting sounds
19 or events in that place, including another person in a stage of undress
20 or sexual activity;

21 (7) covertly records or broadcasts an image of another
22 person's intimate area underneath clothing, by use of any device, and
23 that image is taken while that person is in a public place and without
24 that person's consent;

25 (8) divulges, without the consent of the sender or the
26 receiver, the existence or contents of any messages or photographic
27 image by telephone, telegraph, letter, electronic transmission, or other

1 means of communicating privately, if the accused knows that the
2 message or photographic image was unlawfully intercepted or if the
3 accused learned of the message or photographic image in the course
4 of employment with an agency engaged in transmitting it; or

5 (9) knowingly possesses materials created under
6 circumstances prohibited in Subsection (b) below.

7 (10) This Subsection (a) *shall not* apply to any dissemination,
8 distribution, or transfer of images subject to this Subsection by an
9 electronic communication service provider or remote storage service
10 in the ordinary course of its business.

11 (11) In addition to any penalties the court may impose, the
12 court may order the destruction of any recording made in violation of
13 this Subsection (a).

14 (b) A person commits a felony in the third degree, if, except in the
15 execution of a public duty or as authorized by law, when, with the intent of
16 arousing, appealing to or gratifying the lust or passions or sexual desires of
17 such person or another person, or for his own or another person's lascivious
18 entertainment or satisfaction of prurient interest, or for the purpose of
19 sexually degrading or abusing any other person, or for the purpose of
20 annoying, harassing or intimidating any other person, the person
21 intentionally or knowingly installs or uses, or both, in any private place or in
22 a place where an individual has a reasonable expectation of privacy, without
23 consent of the person or persons entitled to privacy therein, any device for
24 observing, recording, amplifying, or broadcasting another person in a stage
25 of undress or sexual activity. The court may order the destruction of any
26 recording made in violation of this Subsection (b).

1 (c) A person commits the crime of video voyeurism, which is a
2 felony in the second degree, if, except in the execution of a public duty or as
3 authorized by law, when, with the intent of arousing, appealing to or
4 gratifying the lust or passions or sexual desires of such person or another
5 person, or for his own or another person's lascivious entertainment or
6 satisfaction of prurient interest, or for the purpose of sexually degrading or
7 abusing any other persons, or for the purpose of annoying, harassing or
8 intimidating any other person, the person intentionally or knowingly
9 disseminates, publishes or sells any image or images of the intimate areas of
10 another person or persons without the consent of such other person or
11 persons and with knowledge that such image or images were obtained. The
12 court may order the destruction of any recording made in violation of this
13 Subsection (c).

14 (d) Definitions for the purpose of this Section:

15 (1) *broadcast* means the electronic transmittal of a visual
16 image with the intent that it be viewed by a person or persons;

17 (2) *disseminate* means to make available by any means to
18 any person;

19 (3) *electronic communication* means any transfer of signs,
20 signals, writings, images, sounds, data, or intelligence of any nature
21 transmitted in whole or part by a wire, radio, electromagnetic,
22 photoelectronic, or photo optical system;

23 (4) *electronic communication service provider* means any
24 person engaged in the offering or sale of electronic communication
25 services to the public;

26 (5) *electronic communication system* means any wire, radio,
27 electromagnetic, photo-optical, or photo-electronic facilities for the

1 transmission of wire or electronic communications, and any computer
2 facilities or related electronic equipment for the electronic storage of
3 such communications, including e-mail, web hosting, multimedia
4 messaging services, and remote storage services offered by an
5 electronic communication service provider;

6 (6) *imaging device* means any instrument capable of
7 recording, storing, viewing or transmitting visual images;

8 (7) *intimate areas* means any portion of a person's
9 underwear, pubic area, anus, buttocks, vulva, genitals, or female
10 breast;

11 (8) *intimate areas underneath clothing* does not include
12 intimate areas visible through a person's clothing or intimate areas
13 exposed in public;

14 (9) *person* means any natural person, corporation,
15 partnership, firm, association, joint venture or any other recognized
16 legal entity or any agent or servant thereof;

17 (10) *place where a person has a reasonable expectation of*
18 *privacy* means:

19 (A) a place where a reasonable person would believe
20 that he could undress, be undressed or engage in sexual activity
21 in privacy, without concern that he or she is being viewed,
22 photographed, filmed or otherwise recorded by an imaging
23 device; or

24 (B) a place where a person might reasonably expect to
25 be safe from casual or hostile surveillance by an imaging
26 device; or

1 (C) any public place where a person, by taking
2 reasonable steps to conceal intimate areas, should be free from
3 the viewing, recording, storing or transmitting of images
4 obtained by imaging devices designed to overcome the barriers
5 created by a person's covering of intimate areas;

6 (11) *public place* means an area generally open to the public,
7 regardless of whether it is privately owned, and includes, but is *not*
8 limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways,
9 parking lots, buses, tunnels, buildings, stores, and restaurants;

10 (12) *publish* means to:

11 (A) disseminate with the intent that such image or
12 images be made available by any means to any person; or

13 (B) disseminate with the intent that such images be
14 sold by another person; or

15 (C) post, present, display, exhibit, circulate, advertise
16 or allow access by any means so as to make an image or images
17 available to the public; or

18 (D) disseminate with the intent that an image or images
19 be posted, presented, displayed, exhibited, circulated,
20 advertised or made accessible by any means and to make such
21 image or images available to the public;

22 (13) *remote storage service* means the provision to the public
23 of computer storage or processing services by means of an electronic
24 communication system;

25 (14) *sell* means to disseminate to another person, or to
26 publish, in exchange for something of value.

1 (e) Notwithstanding any law to the contrary, any individual
2 convicted of a criminal offense under this § 70.35 *shall* be registered on the
3 Crimes Against Minors and Sex Offender Registry in Chapter 89 of Title 9,
4 GCA, as follows: a level three offender for a misdemeanor conviction under
5 this § 70.35; a level two offender for a felony in the third degree conviction
6 under this § 70.35; and a level one offender for a second degree felony under
7 this § 70.35.”

8 **Section 3. Effective Date.** This Act *shall* become effective upon
9 enactment.

10 **Section 4. Severability.** *If* any of the provisions of this law or its
11 application to any person or circumstance is found to be invalid or contrary to law,
12 such invalidity *shall not* affect other provisions or applications of this law which
13 can be given effect without the invalid provisions or application, and to this end the
14 provisions of this law are severable.