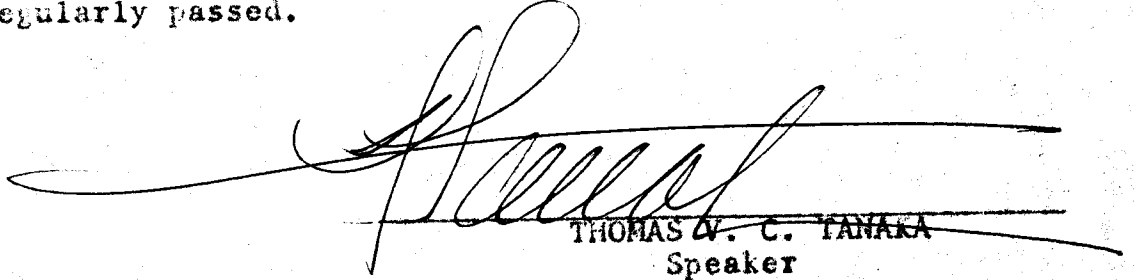


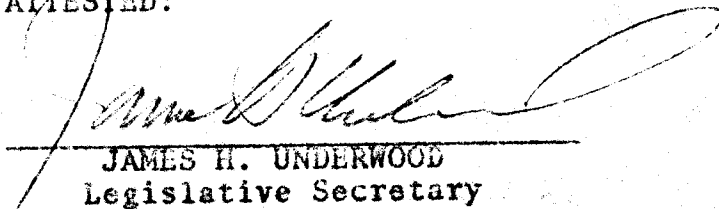
FIFTEENTH GUAM LEGISLATURE
1979 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

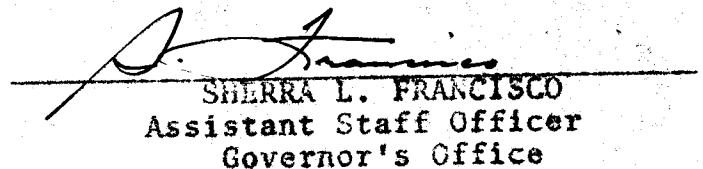
This is to certify that Bill No. 361, "An Act to add new Sections 90.45, 90.46, 90.47, 90.48 and 90.51 to the Criminal and Correctional Code to permit the Director of Corrections to enter into contracts with the United States for the transfer of Guam prisoners to federal correctional institutions and to establish procedures for all transfers of Guam prisoners to correctional institutions outside the territory of Guam", was on the 10th day of August 1979, duly and regularly passed.


THOMAS V. C. TANAKA
Speaker

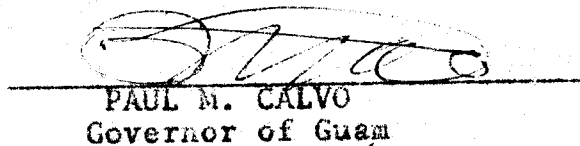
ATTESTED:


JAMES H. UNDERWOOD
Legislative Secretary

This Act was received by the Governor this 27th day of
August 1979, at 11:15 o'clock P.M.


SHERRA L. FRANCISCO
Assistant Staff Officer
Governor's Office

APPROVED:


PAUL M. CALVO
Governor of Guam

DATED: 8/31/79
PL15-59

FIFTEENTH GUAM LEGISLATURE
1979 (FIRST) Regular Session

Bill No. 361

Introduced by

E. R. Duenas
P. F. Perez, Jr.
R. F. Taitano
F. J. Quitugua

AN ACT TO ADD NEW SECTIONS 90.45, 90.46,
90.47, 90.48 AND 90.51 TO THE CRIMINAL AND
CORRECTIONAL CODE TO PERMIT THE DIRECTOR
OF CORRECTIONS TO ENTER INTO CONTRACTS WITH
THE UNITED STATES FOR THE TRANSFER OF GUAM
PRISONERS TO FEDERAL CORRECTIONAL INSTITUTIONS
AND TO ESTABLISH PROCEDURES FOR ALL TRANSFERS
OF GUAM PRISONERS TO CORRECTIONAL INSTITUTIONS
OUTSIDE THE TERRITORY OF GUAM.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. A new Section 90.45 is hereby added to the
Criminal and Correctional Code to read as follows:

"Section 90.45. Authorization to transfer prisoners
to federal correctional institutions. The Director is
authorized to enter into one or more contracts with the
Attorney General of the United States pursuant to the
authority granted to the Attorney General of the United
States by Title 18, United States Code, Section 5003, for
the custody, care, subsistence, education, treatment and
training, in one or more federal correctional institutions,
of persons convicted of criminal offenses in the courts
of the territory of Guam; provided, that any such contract
shall provide for the reimbursement of the United States in
full for all costs or other expenses incurred by the United
States for such custody, care, subsistence, education, treat-
ment and training; and provided further, that the Director
shall comply with the relevant provisions of Sections 90.46
through 90.48 inclusive of this Code prior to the physical
transfer of any such person to a federal correctional
institution."

1 Section 2. A new Section 90.46 is hereby added to the
2 Criminal and Correctional Code to read as follows:

3 "Section 90.46. Emergency transfers of inmates.

4 (a) Existence of 'correctional emergency'. The
5 Director may declare a correctional emergency under the
6 following circumstances:

7 (1) When the Director determines the
8 existence of conditions which have affected, or in
9 the immediate future will affect, the physical
10 integrity of any correctional institution over
11 which he has jurisdiction or the health or safety
12 of the inmates thereof; and

13 (2) The effect of such conditions will, in
14 the Director's opinion, be to render such institu-
15 tion unable to provide secure custody and proper
16 care for the inmates thereof.

17 The term 'conditions' as used hereinabove includes,
18 although it is not limited to, fire, earthquake,
19 explosion, typhoon, flood, other acts of God and
20 calamitous events and diseases, but it shall not
21 include riot, insurrection or any other distur-
22 bance created by the inmates of such institution.

23 (b) Procedure for declaration. Whenever the
24 Director determines the existence of a correctional
25 emergency as defined hereinabove, he shall make and
26 execute a short, plain written statement setting forth
27 the nature of such emergency and the basis for his
28 opinion that such emergency will render such institution
29 unable to provide secure custody and proper care for the

1 inmates thereof. Such statement shall be filed in the
2 permanent records of the Department as soon after its
3 execution as is practicable. Copies of such statement
4 shall be delivered to the Parole Board and to the Office
5 of the Attorney General within five (5) calendar days
6 after its execution by the Director.

7 (c) Transfer of inmates. Following the declara-
8 tion of a correctional emergency as provided for here-
9 inabove, the Director may, without further delay, enter
10 into one or more contracts such as those contemplated
11 by Section 90.45 of this Code or by Article III of the
12 Western Interstate Corrections Compact (Section 90.52 of
13 this Code), and he may thereafter transfer an inmate
14 or inmates of the correctional institution for which
15 such correctional emergency was declared to another
16 correctional institution without any further administra-
17 tive proceedings; provided, however, that any transfer
18 of an inmate or inmates under conditions of correctional
19 emergency shall be to a correctional institution with-
20 in the territory of Guam, if such then exists and then
21 has the capability of providing secure custody and
22 proper care to such inmate or inmates, and that no in-
23 mate shall be transferred to a correctional institution
24 outside the territory of Guam under conditions of
25 correctional emergency unless no correctional institu-
26 tion then existing within the territory of Guam then has
27 the capability of providing secure custody and proper
28 care to such inmate.

1 (d) Termination of correctional emergency. When-
2 ever the Director determines that the conditions which
3 necessitated the declaration of a correctional emergency
4 no longer have the effect of rendering the correctional
5 institution unable to provide secure custody and proper
6 care for the inmates thereof, the Director shall declare
7 the termination of such correctional emergency. Such
8 declaration shall be in writing and executed by the
9 Director and shall be filed and delivered as set forth
10 in Subsection (b) of this Section. Such termination
11 shall be effective immediately upon its execution.

12 (e) Return of inmates. Upon the termination of a
13 correctional emergency, all inmates who were transferred
14 under the provisions of Subsection (c) of this Section
15 shall immediately be returned to the correctional
16 institution from which they were transferred, at the
17 Department's expense."

18 Section 3. A new Section 90.47 is hereby added to the
19 Criminal and Correctional Code to read as follows:

20 "Section 90.47. Disciplinary transfer of inmates.

21 (a) Circumstances for Director's recommendation.
22 The Director may recommend the disciplinary transfer of
23 an inmate to a correctional institution outside the
24 territory of Guam under either of the following
25 circumstances:

26 (1) When such inmate is alleged by an
27 officer, employee or other inmate of a Guam
28 correctional institution to have committed a
29 violation of such institution's disciplinary rules
30 or regulations, which violation might constitute

1 a threat to the order or discipline of such
2 institution or to the physical safety of an
3 officer, employee or inmate thereof, whether or
4 not such violation of rules or regulations would
5 also be a violation of law; or

6 (2) When such inmate, subsequent to the con-
7 viction for which he was incarcerated, is subse-
8 quently convicted of a violation of Section 58.20
9 or Section 58.30 of this Code, or of any violent
10 crime against the person of another as such crimes
11 are set forth in this Code.

12 (b) Procedures for recommending disciplinary
13 transfer. When the Director determines that an inmate
14 be recommended for disciplinary transfer to a correc-
15 tional institution outside the territory of Guam, the
16 Director shall provide the following to the Chairperson
17 of the Parole Board:

18 (1) A written recommendation executed by
19 the Director for the inmate's disciplinary trans-
20 fer. Such recommendation shall include, but shall
21 not be limited to, the following: a short, plain
22 written statement of the inmate's alleged violation
23 of the Guam correctional institution's rules or
24 regulations (as referred to in Subsection (a)(1)
25 of this Section) or evidence of his conviction
26 (as referred to in Subsection (a)(2) of this Sec-
27 tion) as the case may be; and a short, plain
28 written statement of the Director's reasons for
29 recommending the inmate's disciplinary transfer
30 to a correctional institution outside the territory
31 of Guam;

1 (2) A copy of the written rules or regula-
2 tions, if any, which the inmate is alleged to have
3 violated; and

4 (3) The names and addresses of all persons
5 who alleged the inmate to have violated the Guam
6 correctional institution's rules or regulations,
7 if such is alleged; provided, that if any person
8 who alleged the inmate to have violated such rules
9 or regulations is an unidentified informant, then
10 in lieu of that person's name and address, the
11 Director shall provide the Chairperson sufficient
12 factual information from which the Parole Board
13 might reasonably conclude that such informant was
14 credible and his information reliable and a
15 certified copy of such informant's statement which,
16 in factual language, establishes by its specificity
17 that such informant had personal knowledge of the
18 matters contained therein. The Parole Board shall
19 hold no hearing on such transfer until its Chair-
20 person has received all of the items referred to
21 in this Subsection.

22 (c) Notice and time of hearing. Upon receiving
23 all of the items referred to in Subsection (b) of this
24 Section, the Chairperson of the Parole Board shall
25 schedule a hearing upon the recommended disciplinary
26 transfer. Such hearing shall be scheduled to be held
27 not more than fourteen (14) calendar days after the
28 Chairperson has received all such items, but in no

1 event shall it be held sooner than seven (7) calendar
2 days after he has received such items. The Chairperson
3 or his designate shall serve written notice of such
4 hearing to the Director, to the inmate whose
5 disciplinary transfer has been recommended, to the
6 Attorney General and to any other person who in the
7 opinion of the Chairperson might be interested therein.
8 Such written notice shall include, but shall not be
9 limited to, the date, time, location and purpose of the
10 hearing and copies of all of the items referred to in
11 Subsection (b) of this Section. Such notice shall be
12 served at least five (5) calendar days prior to the
13 scheduled date of the hearing.

14 The hearing shall be held at the time scheduled as
15 provided for in this Subsection, and may be continued
16 from time to time at the discretion of the Chairperson;
17 provided, that no such hearing shall be held unless
18 the inmate whose disciplinary transfer has been recom-
19 mended and a quorum of the Parole Board shall be pre-
20 sent, nor unless the requirements set forth in this
21 Subsection have been met, nor unless proof of service
22 of the notice of such hearing shall be submitted to the
23 Parole Board by its Chairperson at the time scheduled
24 for such hearing and entered into the record of such
25 hearing.

26 (d) Conduct of hearing; determination; record.

27 (1) If the Director has recommended an in-
28 mate's disciplinary transfer under circumstances
29 as set forth in Subsection (a)(1) of this Section,

1 the circumstances of the allegation shall be read
2 and fully explained to the inmate by the Chair-
3 person of the Parole Board. The inmate shall admit
4 or deny the allegation. The members of the Parole
5 Board may interrogate the inmate and such other
6 persons as its members consider necessary. If
7 the inmate thinks the allegation against him is
8 untrue in whole or in part, he shall have the bur-
9 den of refuting it to the satisfaction of the
10 Parole Board by the presentation of such informa-
11 tion as is available to him. The inmate may also
12 present any factors which he thinks mitigate
13 against the recommended disciplinary transfer.

14 (2) If the Director has recommended an in-
15 mate's disciplinary transfer under circumstances
16 as set forth in Subsection (a)(2) of this Section,
17 the Chairperson of the Parole Board shall fully
18 explain to the inmate that his transfer has been
19 recommended for the reason of his conviction and
20 shall enter into the record of the hearing official
21 evidence of the conviction. The members of the
22 Parole Board may interrogate the inmate and such
23 other persons as its members consider necessary.
24 The inmate may present any information available
25 to him and he may also present any other factors
26 which he thinks mitigate against the recommended
27 disciplinary transfer.

1 (3) Upon completion of the hearing, the
2 Parole Board shall take the matter of the inmate's
3 disciplinary transfer under advisement. Within
4 five (5) calendar days after the completion of
5 the hearing, the Parole Board shall determine
6 whether or not the inmate is to be transferred.
7 If the Parole Board determines that the inmate is
8 not to be transferred, the Director shall take no
9 further action toward effecting such transfer;
10 provided, that nothing herein shall prevent the
11 Director from again recommending the same inmate's
12 disciplinary transfer should the Director deter-
13 mine that future circumstances as set forth in
14 Subsection (a) of this Section warrant such a
15 recommendation.

16 If the Parole Board determines that the in-
17 mate is to be transferred, its Chairperson shall
18 so inform the Attorney General, in writing. The
19 Attorney General shall thereupon have the authority
20 to deny the inmate's immediate transfer, if in
21 his opinion the inmate will within the next sixty
22 (60) days be required as a witness in a criminal
23 action; provided, that in order to exercise such
24 authority, the Attorney General must so inform
25 the Chairperson of the Parole Board, in writing,
26 within three (3) calendar days after having been
27 informed of the Parole Board's determination that
28 the inmate is to be transferred. If the Attorney

1 General exercises the authority to deny the in-
2 mate's immediate transfer, the transfer shall be
3 delayed until such time as the Attorney General
4 informs the Director and the Chairperson of the
5 Parole Board, in writing, that the inmate is no
6 longer required as a witness; provided, that in
7 no event shall such inmate's transfer be so delayed
8 more than sixty (60) calendar days following the
9 Parole Board's determination that he is to be
10 transferred. If the Attorney General does not
11 exercise the authority to deny the inmate's
12 immediate transfer, the Director shall thereupon
13 take such actions as might be necessary to effect
14 the inmate's transfer.

15 Nothing herein shall prevent the Director
16 from taking preliminary steps, prior to the hearing
17 provided for herein, toward effecting a discipli-
18 nary transfer; provided, that no physical transfer
19 shall be made until the Parole Board has determined
20 that such transfer shall be effected, nor until
21 notice of such determination has been served as
22 provided hereinbelow.

23 (4) A record shall be maintained of each
24 hearing held pursuant to the provisions of this
25 Section. Such record shall include, but shall not
26 be limited to, the following: proof of service
27 of notice of the hearing; copies of all items
28 referred to in Subsection (b) of this Section; a

1 summary of all information produced at the hearing;
2 written notice of the Parole Board's determination;
3 and a brief written explanation of the rationale
4 for its determination. Such record shall be
5 executed by all members of the Parole Board who
6 were present at the hearing and shall be personally
7 served by the Chairperson of the Parole Board or
8 his designate upon the Director and the inmate
9 and filed in the permanent records of the Parole
10 Board, all within five (5) calendar days after the
11 Parole Board has reached its determination.

12 (e) Miscellaneous provisions. The provisions of
13 the Administrative Adjudication Act and of the Open
14 Government Law shall not apply to any proceedings had
15 under the provisions of this Section, nor shall any
16 inmate be represented by legal counsel in any such
17 proceedings. The determination of the Parole Board
18 shall be based upon substantial evidence as manifested
19 in the record of the hearing held under the provisions
20 of this Section and shall be final except as set forth
21 hereinbelow. No inmate shall be recommended for
22 disciplinary transfer while any conviction for which he
23 was incarcerated is on appeal. No statement made by
24 any inmate during the course of any hearing held under
25 the provisions of this Section shall be admitted in
26 evidence against such inmate in any subsequent criminal
27 action, except for the purpose of impeachment or in a
28 trial for perjury, false swearing or contempt.

1 (f) Appeal of Board's determination. Any inmate
2 whom the Parole Board has determined is to be trans-
3 ferred under the provisions of this Section may appeal
4 such determination to the Superior Court of Guam;
5 provided, that the Superior Court of Guam shall be
6 limited to reviewing the record provided for in Sub-
7 section (d)(5) of this Section and shall overturn the
8 Parole Board's determination only when such record
9 clearly indicates that the Parole Board failed to comply
10 with the provisions of this Section or with its own
11 duly promulgated rules and regulations in arriving at
12 such determination, and that the inmate's transfer would
13 be a miscarriage of justice; and provided further, that
14 notwithstanding any other provision of law, stay of
15 such inmate's transfer shall not be granted automati-
16 cally upon the filing of an appeal as provided for in
17 this Subsection."

18 Section 4. A new Section 90.48 is hereby added to the
19 Criminal and Correctional Code to read as follows:

20 "Section 90.48. Inmate transfers for non-emergency
21 and non-disciplinary reasons.

22 (a) Circumstances for Director's recommendation.
23 In addition to the emergency transfers provided for
24 in Section 90.46 of this Code and the disciplinary
25 transfers provided for in Section 90.47 of this Code,
26 the Director may recommend the transfer of an inmate
27 or inmates over whom he has jurisdiction to a correc-
28 tional institution outside the territory of Guam under
29 either of the following circumstances:

1 (1) Whenever the Director determines that,
2 due to the physical or mental condition of a
3 particular inmate, the Guam correctional institu-
4 tion in which he is incarcerated lacks adequate
5 facilities for his custody, care, subsistence,
6 education, treatment or training, and that his
7 interests would be better served by his transfer
8 to a correctional institution outside the territory
9 of Guam; or

10 (2) Whenever the Director determines that,
11 due to overcrowding in a correctional institution
12 over which he has jurisdiction, or due to such
13 institution's lack of adequate facilities for the
14 custody, care, subsistence, education, treatment
15 or training of an inmate or inmates thereof, such
16 inmate's or inmates' interests would be better
17 served by such inmate's or inmates' transfer to
18 a correctional institution outside the territory
19 of Guam.

20 (b) Procedure under Subsection (a)(1).

21 (1) When the Director determines that an
22 inmate be recommended for transfer to a correc-
23 tional institution outside the territory of Guam
24 under the circumstances set forth in Subsection
25 (a)(1) of this Section, he shall provide to the
26 inmate, to the Chairperson of the Parole Board and
27 to the Attorney General a written recommendation,
28 executed by the Director, for such inmate's
29 transfer. The recommendation shall include, but

1 shall not be limited to, the following: a short,
2 plain written statement of the inmate's physical
3 or mental condition; a short, plain written state-
4 ment of the Guam correctional institution's lack
5 of adequate facilities for the inmate's custody,
6 care, subsistence, education, treatment or
7 training; a short, plain written statement setting
8 forth the basis for the Director's determination
9 that the inmate's interests would be better served
10 by his transfer to a correctional institution out-
11 side the territory of Guam; and the Director's
12 recommendation for the inmate's transfer, which
13 shall specify the correctional institution to
14 which such inmate's transfer is recommended and the
15 preliminary steps, if any, which the Director
16 has taken toward effecting such a transfer. The
17 Director shall also provide to the inmate a form
18 on which the inmate may indicate his objection to
19 such a transfer, which form shall also specify
20 the procedure the inmate must follow to indicate
21 such objection.

22 (2) Within five (5) calendar days after
23 receipt of the recommendation referred to in Sub-
24 section (b)(1) of this Section, the inmate and
25 the Attorney General may inform the Director that
26 they object to the recommended transfer. If the
27 inmate objects to the recommended transfer, he
28 shall so inform the Director on the form provided

1 to him for that purpose, setting forth therein the
2 reasons for his objection. If the Attorney
3 General objects to the recommended transfer, he
4 shall so inform the Director in writing, setting
5 forth therein the reasons for his objection. If
6 either the inmate or the Attorney General fails to
7 make a timely objection to the recommended trans-
8 fer, the Director shall deem the inmate or the
9 Attorney General, as the case may be, to have
10 waived any objections to the recommended transfer.

11 (3) If neither the inmate nor the Attorney
12 General makes a timely objection to the recommended
13 transfer, the Director shall forthwith take such
14 actions as might be necessary to effect the in-
15 mate's transfer; provided, that upon the completion
16 of such transfer, the Director shall so inform the
17 Chairperson of the Parole Board and the Attorney
18 General, in writing, and such writing shall be
19 filed in the permanent records of the Parole
20 Board.

21 (4) If either the inmate, the Attorney
22 General, or both, make a timely objection to the
23 recommended transfer, the Director shall so inform
24 the Chairperson of the Parole Board, in writing,
25 and shall simultaneously provide to the Chairperson
26 the following: the recommendation for the inmate's
27 transfer (as provided for in Subsection (b)(1)
28 of this Section); and the objections to the recom-
29 mended transfer.

1 (5) Upon receipt of the items referred to in
2 Subsection (b)(4) of this Section, the Chairperson
3 of the Parole Board shall schedule a hearing upon
4 the recommended transfer. Notice and time of
5 such hearing shall be substantially as provided
6 for in Section 90.47(c) of this Code. At the
7 hearing, the burden shall be upon the person
8 objecting to the transfer to show, to the satisfac-
9 tion of the Parole Board, why such transfer should
10 not take place. A record of each hearing held
11 pursuant to the provisions of this Subsection shall
12 be maintained, which record shall be substantially
13 in the form provided for in Section 90.47 (d)(4)
14 of this Code.

15 (6) Within five (5) calendar days after the
16 completion of the hearing referred to hereinabove,
17 the Parole Board shall determine whether or not the
18 inmate is to be transferred. If the Parole Board
19 determines that the inmate is not to be trans-
20 ferred, the Director shall take no further action
21 toward effecting such transfer; provided, that
22 nothing herein shall prevent the Director from
23 again recommending the same inmate's transfer
24 should the Director determine that future circum-
25 stances as set forth in Subsection (a)(1) of this
26 Section warrant such a recommendation. If the
27 Parole Board determines that the inmate is to be

1 transferred, its Chairperson shall forthwith so
2 inform the Director, in writing, and the Director
3 shall thereupon take such actions as might be
4 necessary to effect the inmate's transfer. Upon
5 the completion of such transfer, the Director shall
6 so inform the Chairperson of the Parole Board and
7 the Attorney General, in writing, and such
8 writing shall be filed in the permanent records
9 of the Parole Board.

10 (c) Procedure under Subsection (a)(2).

11 (1) When the Director determines than an
12 inmate or inmates be recommended for transfer to a
13 correctional institution outside the territory of
14 Guam under the circumstances set forth in Subsec-
15 tion (a)(2) of this Section, he shall undertake
16 the following procedures:

17 (A) The Director shall determine the
18 number of inmates whose transfers are to be
19 recommended.

20 (B) The Director shall conduct a poll
21 of the inmates in the correctional institu-
22 tion, to determine whether any of those in-
23 mates volunteer to be transferred to a
24 correctional institution outside the territory
25 of Guam. The Director shall determine the
26 form of such poll and the manner in which it
27 shall be conducted; provided, that any inmate
28 who so volunteers shall do so in writing
29 and shall execute such writing.

1 (C) If the number of inmates who
2 volunteer to be transferred equals the number
3 of inmates whose transfer the Director has
4 determined to recommend, the Director shall
5 forthwith provide to the Attorney General a
6 list of such inmates' names. If the number
7 of inmates who volunteer to be transferred
8 exceeds the number of inmates whose transfer
9 the Director has determined to recommend,
10 the Director shall in his sole discretion
11 determine which of such inmates are to be
12 recommended for transfer and he shall forth-
13 with provide to the Attorney General a list
14 of those inmates' names.

15 (D) If the number of inmates who
16 volunteer to be transferred is fewer than the
17 number of inmates whose transfer the Director
18 has determined to recommend, the Director
19 shall provide to the Attorney General a list
20 of the names of those inmates who have
21 volunteered to be transferred; and the
22 Director may choose to recommend the transfer
23 of additional inmates, in order to create a
24 list of inmates which is equal in number to
25 the number of inmates whose transfer the
26 Director originally determined to recommend.
27 In such event, the Director shall provide to
28 each such additional inmate the following:
29 notice that the Director has chosen to

1 recommend him for transfer which notice shall
2 set forth reasons for the Director's choice
3 and which shall specify the correctional
4 institution to which such inmate's transfer
5 is recommended; and a form on which the inmate
6 may indicate his objection to such a transfer,
7 which form shall also specify the procedure
8 such inmate must follow to indicate such
9 objection.

10 (E) Within five (5) calendar days after
11 the receipt of the notice referred to in Sub-
12 section (c)(1)(D) of this Section, each such
13 inmate may inform the Director, on the form
14 provided to him for that purpose, that he
15 objects to the recommended transfer. If
16 any such inmate fails to make a timely objec-
17 tion to his recommended transfer, the Director
18 shall deem such inmate to have waived any
19 objections thereto. The Director shall pro-
20 vide to the Attorney General the name of each
21 inmate who failed to make a timely objection
22 to his recommended transfer and shall there-
23 after take such actions as might be necessary
24 to effect such inmate's transfer.

25 If any such inmate makes a timely objec-
26 tion to the recommended transfer, the Director
27 shall so inform the Chairperson of the Parole
28 Board and shall simultaneously provide to

1 the Chairperson the following: the recommenda-
2 tion for such inmate's transfer (as set forth
3 in Subsection (a)(1)(D) of this Section);
4 and such inmate's objection to the recommended
5 transfer. Upon receipt of the items referred
6 to hereinabove, the Chairperson of the Parole
7 Board shall schedule a hearing upon such in-
8 mate's recommended transfer. Notice and time
9 of such hearing shall be substantially as
10 provided for in Section 90.47(c) of this
11 Code. At the hearing, the burden shall be
12 upon the inmate to show, to the satisfaction
13 of the Parole Board, why such transfer should
14 not take place. A record of each hearing
15 held pursuant to the provisions of this Sub-
16 section shall be maintained, which record
17 shall be substantially in the form provided
18 for in Section 90.47(d)(4) of this Code.

19 Within five (5) calendar days after the
20 completion of the hearing referred to herein-
21 above, the Parole Board shall determine
22 whether or not the inmate is to be trans-
23 ferred. If the Parole Board determines that
24 the inmate is not to be transferred, the
25 Director shall take no further action toward
26 effecting his transfer; provided, that nothing
27 herein shall prevent the Director from
28 recommending the same inmate's transfer again

1 should he determine that future circumstances
2 warrant such a recommendation. If the Parole
3 Board determines that the inmate is to be
4 transferred, its Chairperson shall so inform
5 the Director and the Director shall thereupon
6 take such actions as might be necessary to
7 effect the inmate's transfer; provided, that
8 the Director shall comply with the further
9 provisions of this Section before completing
10 such transfer; and provided further, that
11 the Director shall provide to the Attorney
12 General the name of each inmate whom the
13 Parole Board determines is to be transferred.

14 (F) The Attorney General shall have the
15 authority to deny the immediate transfer of
16 any inmate whose transfer has been recom-
17 mended under the provisions of this Subsec-
18 tion, if in his opinion such inmate will
19 within the sixty (60) days next following the
20 Attorney General's receipt of such inmate's
21 name be required as a witness in a criminal
22 action; provided, that in order to exercise
23 such authority, the Attorney General must so
24 inform the Director and the Chairperson of the
25 Parole Board, in writing, within three (3)
26 calendar days after his receipt of such
27 inmate's name. If the Attorney General
28 exercises the authority to deny such inmate's
29 immediate transfer, such transfer shall be
30 delayed until such time as the Attorney

1 General informs the Director and the Chair-
2 person, in writing, that such inmate is no
3 longer required as a witness; provided, that
4 in no event shall such inmate's transfer be
5 so delayed more than sixty (60) calendar days
6 following the determination that such inmate
7 is to be transferred. If the Attorney General
8 does not exercise the authority to deny such
9 inmate's immediate transfer, the Director
10 shall thereupon undertake such actions as
11 might be necessary to effect such inmate's
12 transfer.

13 (d) Miscellaneous provisions. The provisions of
14 the Administrative Adjudication Act and of the Open
15 Government Law shall not apply to any hearing held under
16 the provisions of this Section nor shall any inmate
17 be represented by legal counsel at any such hearing.
18 Any determination of the Parole Board under the pro-
19 visions of this Section shall be based upon substantial
20 evidence as manifested in the record of the hearing held
21 under the provisions of this Section and shall be final
22 except as set forth hereinbelow. No inmate shall be
23 recommended for transfer under the provisions of this
24 Section while any conviction for which he was incar-
25 cerated is on appeal. No statement made by any inmate
26 during the course of any hearing held under the pro-
27 visions of this Section shall be admitted in evidence
28 against such inmate in any subsequent criminal action
29 except for the purpose of impeachment or in a trial
30 for perjury, false swearing or contempt.

1 (e) Appeal of Board's determination. Any inmate
2 whom the Parole Board has determined is to be trans-
3 ferred under the provisions of this Section may appeal
4 such determination to the Superior Court of Guam;
5 provided, that the Superior Court of Guam shall be
6 limited to reviewing the record provided for in this
7 Section and shall overturn the Parole Board's determina-
8 tion only when such record clearly indicates that the
9 Parole Board failed to comply with the provisions of
10 this Section or with its own duly promulgated rules and
11 regulations in arriving at such determination and that
12 the inmate's transfer would be a miscarriage of justice;
13 and provided further, that notwithstanding any other
14 provision of law, stay of such inmate's transfer shall
15 not be granted automatically upon the filing of an
16 appeal as provided for in this Subsection."

17 Section 5. A new Section 90.51 is hereby added to the
18 Criminal and Correctional Code to read as follows:

19 "Section 90.51. No person shall be transferred to a
20 correctional institution outside the territory of Guam unless
21 the applicable provisions of Sections 90.46, 90.47 or 90.48
22 of this Code have first been complied with or unless such
23 person has been legally sentenced to a term of imprisonment
24 in such a correctional institution."

25 Section 6. The following is hereby added to the Criminal
26 and Correctional Code of Guam:

27 "Section 58.25: A person who is guilty of an offense
28 pursuant to Section 58.20 of this Code shall be sentenced
29 to a term of two (2) years but not more than five (5) years
30 of imprisonment and a person who is guilty of an offense

1 pursuant to Section 58.40 of this Code shall be sentenced to
2 a term of five (5) years of imprisonment. Imposition or
3 execution of such sentences shall not be suspended and proba-
4 tion, parole or work release shall not be granted. The
5 sentence imposed under this section shall run consecutive to
6 any sentence already imposed on the offender for any other
7 offense at the time he is sentenced under this section."

DATE 8-10-79

15TH GUAM LEGISLATURE

VOTING RECORD

BILL/RESOLUTION NO. 361

MAIN SPONSOR ERD

SENATOR	AYE	NAY	NOT VOTING	ABSENT
AGUON, Katherine B.	✓			
BAMBA, Cecilia C.	<i>Opposition</i>			
BLAS, Frank F.	✓			
CHARFAUROS, Edward T.	✓			
CRISOSTOMO, Thomas C.		✓		
DUENAS, Edward R.	✓			
ESPALDON, Ernesto M.	✓			
KASPERBAUER, Carmen A.	✓			
LAMORENA, Alberto C., III	✓			
PALOMO, Antonio M.	✓			
PALOMO, Benigno M.	✓			
PEREZ, Peter, Jr.	✓			
QUAN, John F.	✓			
QUITUGUA, Franklin J.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francisco R.	✓			
SUDO, Ramon Q.	✓			
TAITANO, Richard F.	✓			
TANAKA, Thomas V. C.	✓			
UNDERWOOD, James H.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL

19 0 0 0