



*Territory of Guam*  
*Terrision Guam*

OFFICE OF THE GOVERNOR  
URBINAN I MAGA'LAHI  
AGANA, GUAM 96910 U.S.A.

4-03-90

MAR 21 1990

The Honorable Joe T. San Agustin  
Speaker, 20th Guam Legislature  
163 Chalan Santo Papa  
Agana, GU 96910

Dear Mr. Speaker:

I have the honor of transmitting to you Bill 321 (COR), which I have this date signed into law as Public Law 20-155.

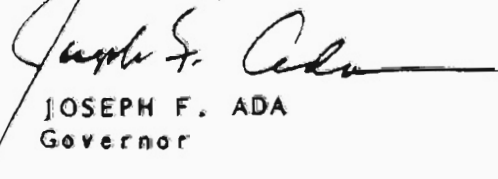
I am very pleased to be able to sign this bill into law. It's about time. Our Republican colleagues in the Legislature have for many years been pushing for legislation which will require victim notification of offender release and for legislation to reactivate the criminal injuries compensation commission.

Both these issues are so very important to our people of Guam. It is a sad fact of life that some of our people become the victims of crime, even violent crime. These victims very often live in fear, especially when those who perpetrate crimes against them are released into society. It is only just that we notify these victims of said release, to prevent any retribution or revenge by the offenders in question.

As for the issue of injury compensation, this is a concept which has been introduced well and successfully in many jurisdictions within the United States and it's about time we tried it here.

My congratulations to you and your colleagues for seeing fit to adopt these Republican ideas, to set aside party differences and do what is best for the people of Guam. Thank you and Si Yulo's Malase.

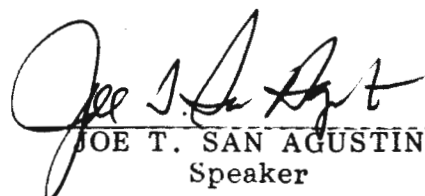
Sincerely,

  
JOSEPH F. ADA  
Governor

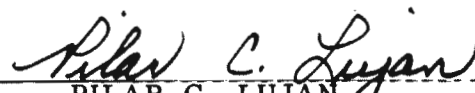
TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

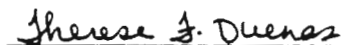
This is to certify that Substitute Bill No. 321 (COR), "AN ACT TO ADD CHAPTERS 85, 86, AND SUBSECTION (e) OF §80.45, TO TITLE 9, GUAM CODE ANNOTATED, REQUIRING VICTIM NOTIFICATION OF OFFENDER RELEASE, TO REACTIVATE THE CRIMINAL INJURIES COMPENSATION COMMISSION, AND MAKING AN APPROPRIATION THEREFOR," was on the 7th day of March, 1990, duly and regularly passed.

  
JOE T. SAN AGUSTIN  
Speaker

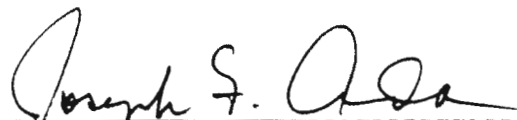
Attested:

  
PILAR C. LUJAN  
Senator and Legislative Secretary

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This Act was received by the Governor this 9<sup>th</sup> day of March, 1990,  
at 4:52 o'clock p.m.

  
Therese J. Duenas  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
JOSEPH F. ADA  
Governor of Guam

Date: MAR 21 1990

Public Law No. 20-155

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

Bill No. 321 (COR)  
As substituted by the Committee  
on Judiciary & Criminal Justice;  
and further substituted by the  
Committee on Rules

Introduced by:

P. C. Lujan  
J. P. Aguon  
E. P. Arriola

M. Z. Bordallo  
H. D. Dierking  
C. T. C. Gutierrez  
G. Mailloux  
T. S. Nelson  
D. Parkinson  
F. J. A. Quitugua  
E. D. Reyes  
J. T. San Agustin  
F. R. Santos  
J. G. Bamba  
D. F. Brooks  
E. R. Duenas  
E. M. Espaldon  
M. D. A. Manibusan  
M. C. Ruth  
T. V. C. Tanaka  
A. R. Unpingco

AN ACT TO ADD CHAPTERS 85, 86, AND  
SUBSECTION (e) OF §80.45, TO TITLE 9,  
GUAM CODE ANNOTATED, REQUIRING  
VICTIM NOTIFICATION OF OFFENDER  
RELEASE, TO REACTIVATE THE CRIMINAL  
INJURIES COMPENSATION COMMISSION, AND  
MAKING AN APPROPRIATION THEREFOR.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. Chapter 85 is hereby added to Title 9, Guam Code  
3 Annotated, to read:

4 "CHAPTER 85

5 VICTIM NOTIFICATION

6 §85.10. Title. This Chapter may be cited as the Victim  
7 Notification of Offender Release Act.

1           §85.11. Definitions. As used in this Chapter:

2           (a) "Offense against the person" means any of the offenses  
3 against a person described in this title and includes any attempt to  
4 commit any of such offenses.

5           (b) "Prisoner" or "parolee" means a person who has been  
6 convicted of an offense against the person.

7           (c) "Victim" means the person who was the victim of the offense  
8 against the person for which the prisoner or parolee was convicted,  
9 who has submitted a written request for notice of the parole or final  
10 unconditional release of the prison or parolee.

11          §85.12. Notice of hearing for a suspended sentence or probation.

12          (a) Before the court suspends the sentence of a defendant  
13 convicted of an offense against the person, or of an attempt to commit  
14 such an offense, or places such defendant on probation without  
15 requiring the serving of a term of imprisonment, the court shall  
16 provide written notice or a certified copy of the proposed judgment to  
17 each victim of such offense of the hearing on the suspension of  
18 sentence or probation, as the case may be, whenever the victim has  
19 made a written request for such advance notice. Notice shall be given  
20 to the victim at the address given on the request for notice or such  
21 other address as may be provided to the Department of Law or  
22 Department of Corrections' Probation Office by the victim from time to  
23 time. The victim may testify at any such sentence hearing and make  
24 recommendations to the court.

25          (b) Neither the failure of any territorial officer or employee to  
26 carry out the requirements of this section nor compliance with it shall  
27 subject the territory or the officer or employee to liability in any civil  
28 action. However, such failure may provide a basis for such  
29 disciplinary action as may be deemed appropriate by competent  
30 authority.

31          §85.13. Notice of parole.

32          (a) Before placing a prison on parole, before releasing a parolee  
33 from parole, and before placing a prison in a work release or study  
34 release program, the releasing authority shall provide written notice of

1 the hearing on the proposed parole, release of a parolee from parole,  
2 or placement in a work release program, to each victim, who may  
3 testify at such hearing and make recommendations to the releasing  
4 authority.

5 (b) Before the final unconditional release from a correctional  
6 facility of a prison who has not been paroled or earlier discharged,  
7 the Department of Corrections shall provide written notice of the  
8 hearing on the proposed release to each victim, who may testify at the  
9 hearing thereon and make recommendations to the Department of  
10 Corrections.

11 (c) The Territorial Parole Board or Department of Corrections,  
12 as the case may be, shall provide such written notice to the victim at  
13 the address given on the request for notice or such other address as  
14 may be provided by the victim from time to time.

15 (d) Neither the failure of any territorial office or employee to  
16 carry out the requirements of this section nor compliance with it shall  
17 subject the territory or the office or employee to liability in any civil  
18 action. However, such failure may provide a basis for such  
19 disciplinary action as may be deemed appropriate by competent  
20 authority."

21 Section 2. Chapter 86 is added to Title 9, Guam Code Annotated, to  
22 read:

23 "CHAPTER 86

24 COMPENSATION FOR DAMAGES FROM CRIMINAL ACTIVITIES

25 §86.10 Definitions. As used in this Chapter:

26 (a) 'Child' means an unmarried person who is under eighteen  
27 (18) years of age and includes a stepchild or an adopted child;

28 (b) 'Commission' means the Criminal Injuries Compensation  
29 Commission established by this Chapter;

30 (c) 'Dependents' means such relatives of a deceased victim who  
31 were wholly or partially dependent upon his income at the time of his  
32 death or would have been so dependent but for the incapacity due to  
33 the injury from which the death resulted and includes the child of the  
34 victim born after his death;

1 (d) 'Injury' means actual bodily harm and, in respect of a  
2 victim, includes pregnancy, and mental or nervous shock;

3 (e) 'Private citizen' means any natural person other than a peace  
4 officer who is actively engaged in the performance of his duties;

5 (f) 'Relative' means a victim's spouse, parent, grandparent,  
6 stepfather, stepmother, child, grandchild, brother, sister,  
7 half-brother, half-sister or spouse's parents;

8 (g) 'Victim' means a person who is injured or killed by any act  
9 or omission of any other person coming within the description of any  
10 of the crimes specified in Section 86.55 of this Chapter; and

11 (h) 'Person' means a natural person.

12 §86.15 Creation of the Criminal Injuries Compensation  
13 Commission. There is within the government of Guam a Criminal  
14 Injuries Compensation Commission which shall be composed of five (5)  
15 members appointed by the Governor with the advice and consent of the  
16 Legislature. One (1) member of the Commission shall be an attorney  
17 who has been admitted to practice in Guam for at least five (5) years.  
18 The Commission is within the Department of Law for administrative  
19 purposes. Annually, the members shall elect a chairperson of the  
20 Commission.

21 §86.20 Tenure and Compensation of members. The term of office  
22 of each member of the Commission shall be four (4) years or until his  
23 successor is appointed except that the terms of office of the members  
24 first taking office shall expire as designated by the Governor at the  
25 time of appointment as follows: One (1) at the end of one (1) year,  
26 one (1) at the end of two (2) years, one (1) at the end of three (3)  
27 years, and two (2) at the end of four (4) years. Any member  
28 appointed to fill the vacancy occurring prior to the expiration of the  
29 term for which his predecessor was appointed, shall be appointed for  
30 the remainder of the term. A vacancy in the Commission shall not  
31 affect its powers. If any member of the Commission is unable to act  
32 because of absence, illness or other sufficient cause, the Governor  
33 may make a temporary appointment, and such appointee shall have all

1 the powers and duties of a regular member of the Commission for the  
2 period of his appointment.

3 §86.25 Powers and procedures of Commission. Upon an  
4 application made to the Commission under this Chapter, the Commission  
5 shall fix a time and place for a hearing on such application and shall  
6 cause notice thereof to be given to the applicant. The Commission may  
7 hold such hearings, sit and act as such times and places, and take  
8 such testimony as the Commission may deem advisable. Any three (3)  
9 members shall constitute a quorum. The concurring vote of three (3)  
10 members shall be necessary to take any action. Any member of the  
11 Commission may administer oaths or affirmations to witnesses appearing  
12 before the Commission. The Commission shall have such powers of  
13 subpoena and compulsion of attendance of witnesses and production of  
14 documents and of examination of witnesses as are conferred upon the  
15 Superior Court. Subpoena shall be issued under the signature of the  
16 Chairman. The Superior Court may, upon the application of the  
17 Commission, enforce the attendance and testimony of any witness and  
18 the production of any documents so subpoenaed. Subpoena and  
19 witness fees and mileage shall be the same as in criminal cases in the  
20 Superior Court, and shall be payable from funds appropriated for  
21 expenses of administration.

22 86.30 Hearings and evidence. (a) Where any application is  
23 made to the Commission, the applicant and the Commission's legal  
24 advisor shall be entitled to appear and be heard. Any other person  
25 may appear and be heard who satisfied the Commission that he has a  
26 substantial interest in the proceedings. In any case in which the  
27 person entitled to make an application is a child, the application may  
28 be made on his behalf by his parent or legal guardian. In any case in  
29 which the person entitled to make an application is mentally defective,  
30 the application may be made on his behalf by his guardian or such  
31 other individual authorized to administer the estate.

32 (b) Where under this Chapter a person is entitled to appear and  
33 be heard by the Commission, that person may appear in person or by  
34 his attorney. All hearings shall be open to the public unless, in a

1 particular case, the Commission determines that the hearing, or a  
2 portion thereto, should be held in private, having regard to the fact  
3 that the offender has not been convicted or to the interest of the  
4 victim of an alleged sexual offense.

5 (c) Every person appearing under this Chapter shall have the  
6 right to produce evidence and to cross-examine witnesses. The  
7 Commission may receive as evidence any statement, document,  
8 information or matter that may, in the opinion of the Commission,  
9 contribute to its functions under this Chapter, whether or not such  
10 statement, document, information or matter would be admissible in a  
11 court of law.

12 (d) If any person has been convicted of any offense with  
13 respect to an act or omission on which a claim under this Chapter is  
14 based, proof of that conviction unless an appeal against the conviction  
15 or a petition for a hearing in respect of the charge is pending or a  
16 new trial or rehearing has been ordered, shall be taken as conclusive  
17 evidence that the offense has been committed.

18 §86.35 Medical examination. The Commission may appoint an  
19 impartial licensed physician to examine any person making application  
20 under this Chapter, and the fees for the examination shall be paid  
21 from funds appropriated for expenses of administration.

22 §86.40 Attorney fees. (a) The Commission may, as part of any  
23 order entered under this Chapter, determine and allow reasonable  
24 attorney fees, which if the award of compensation is more than One  
25 Thousand Dollars (\$1,000) shall not exceed fifteen percent (15%) of the  
26 award, to be paid out of but not in addition to the award, to the  
27 attorneys representing the applicant; provided, that the amount of the  
28 attorney fees shall not, in any event, exceed the award of  
29 compensation remaining after deducting that portion thereof for  
30 expenses actually incurred by the claimant.

31 (b) Any attorney who charges, demands, receives or collects for  
32 services rendered in connection with any proceedings under this  
33 Chapter any amount in excess of that allowed under this section, if



1 any compensation is paid, shall be fined not more than Two Thousand  
2 Dollars (\$2,000).

3 §86.45 Reconsideration by Commission; Judicial Review.

4 (a) The Commission may, on its own motion or on the application  
5 of any person aggrieved by an order or decision of the Commission,  
6 reconsider the order or decision and revoke, confirm and verify the  
7 order or decision, based upon the findings of the Commission.

8 (b) Any person aggrieved by an order or decision of the  
9 Commission on the sole ground that the order or decision was in  
10 excess of the Commission's authority or jurisdiction, shall have a right  
11 of appeal to the Superior Court; provided, that the appeal is filed  
12 with the Commission within thirty (30) days after service of an original  
13 or a certified copy of such order or decision. Except as otherwise  
14 provided in this Section, orders and decisions of the Commission shall  
15 be conclusive and not subject to judicial review.

16 §86.50 Eligibility for Compensation. (a) In the event any  
17 person is injured or killed by any act or omission of any other person  
18 coming within the criminal jurisdiction of Guam after September 30,  
19 1980, which act or omission is within the description of the crimes  
20 enumerated in Section 86.55, the Commission may, in its discretion,  
21 upon an application, order the payment of compensation in accordance  
22 with this Chapter:

23 (1) To or for the benefit of the victim;

24 (2) To any person responsible for the maintenance of the  
25 victim, where that person has suffered pecuniary loss or incurred  
26 expenses as a result of the victim's injury or death;

27 (3) In the case of the death of the victim, to or for the  
28 benefit of any one or more of the dependents of the deceased  
29 victim; or

30 (4) To a parent of an adult deceased victim, or to an adult  
31 son or daughter of a deceased victim, where the parent or adult  
32 son or daughter has incurred expenses on account of hospital,  
33 medical, funeral and burial expenses as a result of the victim's  
34 injury and death.

1 (b) For the purposes of this Chapter, a person shall be deemed  
2 to have intentionally committed an act or omission notwithstanding that  
3 by reason of age, insanity, drunkenness or otherwise he was legally  
4 incapable of forming a criminal intent.

5 (c) In determining whether to make an order under this Section,  
6 the Commission may consider any circumstances it determines to be  
7 relevant, and the Commission shall consider the behavior of the victim,  
8 and whether, because of provocation or otherwise, the victim bears  
9 any share of responsibility for the crime that caused his injury or  
10 death and the Commission shall reduce the amount of compensation in  
11 accordance with its assessment of the degree of such responsibility  
12 attributable to the victim.

13 (d) An order may be made under this Section whether or not  
14 any person is prosecuted for or convicted of a crime arising out of an  
15 act or omission described in Subsection (a) of this Section; provided,  
16 that an arrest has been made or such act or omission has been  
17 reported to the police without undue delay. No order may be made  
18 under this Section unless the Commission finds that:

19 (a) The act or omission did occur; and

20 (b) The injury or death of the victim resulted from the act  
21 or omission.

22 (e) Upon application from either the Attorney General or the  
23 Chief of Police, the Commission may suspend proceedings under this  
24 Chapter for such period as it deems desirable on the ground that a  
25 prosecution for a crime arising out of the act or omission has been  
26 commenced or is imminent, or that release of the investigation report  
27 would be detrimental to the public interest.

28 §86.55 Violent Crimes. (a) The crimes to which this Chapter  
29 applies are the following and no other:

30 (1) Aggravated Murder (Criminal and Correctional Code,  
31 Section 16.30);

32 (2) Murder (Criminal and Correctional Code, Section 16.40);

33 (3) Manslaughter (Criminal and Correctional Code, Section  
34 19.20);

- 1                   (4) Aggravated Assault (Criminal and Correctional Code,  
2 Section 19.20);
- 3                   (5) Assault (Criminal and Correctional Code, Section  
4 19.30);
- 5                   (6) Kidnapping (Criminal and Correctional Code, Section  
6 22.20);
- 7                   (7) Felonious Restraints (Criminal and Correctional Code,  
8 Section 22.20);
- 9                   (8) Child Stealing (Criminal and Correctional Code, Section  
10 22.40);
- 11                  (9) Custodial Interference (Criminal and Correctional Code,  
12 Section 22.50);
- 13                  (10) Criminal Sexual Conduct in the First Degree (Criminal  
14 and Correctional Code, Section 25.15);
- 15                  (11) Criminal Sexual Conduct in the Second Degree (Criminal  
16 and Correctional Code, Section 25.20);
- 17                  (12) Criminal Sexual Conduct in the Third Degree (Criminal  
18 and Correctional Code, Section 25.25);
- 19                  (13) Criminal Sexual Conduct in the Fourth Degree (Criminal  
20 and Correctional Code, Section 25.30);
- 21                  (14) Assault with Intent to Commit Criminal Sexual Conduct  
22 (Criminal and Correctional Code, Section 25.35);
- 23                  (b) For the purpose of this Chapter, the operation of a motor  
24 vehicle, boat or aircraft that results in an injury or death shall not  
25 constitute a crime, unless the injuries were intentionally inflicted  
26 through the use of such vehicle, boat or aircraft.
- 27                  (c) Any fine imposed pursuant to Section 80.50 of this title upon  
28 conviction of any of the crimes specified in Subsection (a) of this  
29 Section shall be paid into the Criminal Injuries Compensation Fund  
30 established by Section 86.95 of this Chapter.
- 31                  §86.60 Award of Compensation. The Commission may order only  
32 from available balances in the Criminal Injuries Compensation Fund the  
33 payment of compensation under this Chapter for:

- 1 (1) Expenses actually and reasonably incurred as a result
- 2 of the injury or death of the victim;
- 3 (2) Loss to the victim of earning power as a result of total
- 4 or partial incapacity;
- 5 (3) Pecuniary loss to the dependents of the deceased
- 6 victim;
- 7 (4) Pain and suffering to the victim; and
- 8 (5) Any other pecuniary loss directly resulting from the
- 9 injury or death of the victim which the Commission determines to
- 10 be reasonable and proper.

11 §86.65 Relationship to Offender. No compensation shall be  
12 awarded, except for expenses specified in Subsection (1) of Section  
13 86.60 of this Chapter, if the victim was at the time of his injury or  
14 death living with the offender as spouse or as a member of the  
15 offender's household.

16 §86.70 Recovery from offender. Whenever any person is  
17 convicted of an offense that includes any crime enumerated in Section  
18 86.55 of this Chapter and an order for the payment of compensation is  
19 or has been made under this Chapter for injury or death resulting  
20 from the act or omission constituting such offense, the Commission may  
21 institute a derivative action in the Superior Court against the person  
22 or against any person liable at law on his behalf, in the name of the  
23 victim or such of his dependents as have been awarded compensation  
24 under this Chapter, for such damages as may be recoverable at  
25 common law by the victim or such dependents without reference to the  
26 payment of compensation. The court shall have jurisdiction to hear,  
27 determine and render judgment in any such action. The time of the  
28 occurrence of the act or omission until conviction of the offense and,  
29 thereafter, as long as the offender is in confinement for conviction of  
30 the offense, shall not constitute any part of the time limited for the  
31 commencement of the action by the Commission under the applicable  
32 statute of limitations. Any recovery in the action shall belong to the  
33 government of Guam; provided, that the Commission shall amend its  
34 order of compensation to provide for the payment of any portion of the

1 recovery in excess of the amount of compensation prescribed in the  
2 order to any of the persons entitled to receive compensation under  
3 Section 86.50 of this Chapter in such proportions and upon such terms  
4 as the Commission shall deem appropriate.

5 §86.75 Eligibility for compensation. In the event a private  
6 citizen incurs injury or property damage in preventing the commission  
7 of a crime within Guam, in apprehending a person who has committed a  
8 crime within Guam, or in materially assisting a peace officer who is  
9 engaged in the prevention or attempted prevention of such a crime or  
10 the apprehension or attempted apprehension of such a person, the  
11 Commission may, in its discretion, upon an application, order the  
12 payment of compensation in accordance with this Chapter:

13 (1) To or for the benefit of the private citizen; or

14 (2) To any person responsible for the maintenance of the  
15 private citizen, where that person has suffered pecuniary loss or  
16 incurred expenses as a result of the private citizen's injury.

17 §86.80 Award of compensation. The Commission may order the  
18 payment of compensation under this Chapter for:

19 (1) Expenses actually and reasonably incurred as a result  
20 of the injury of the private citizen;

21 (2) Pain and suffering to the private citizen;

22 (3) Loss to the private citizen of earning power as a result  
23 of total or partial incapacity; and

24 (4) Pecuniary loss to the private citizen directly resulting  
25 from damage to his property.

26 §86.85 Terms of order. Except as otherwise provided in this  
27 Chapter, any order for the payment of compensation under this  
28 Chapter may be made on such terms as the Commission deems  
29 appropriate. Without limiting the generality of the preceding sentence,  
30 the order may provide for apportionment of the compensation, for the  
31 holding of the compensation or any part thereof in trust, for the  
32 payment of the compensation in a lump sum or periodic installments,  
33 and for the payment of compensation for hospital, medical, funeral and  
34 burial expenses directly to the person who has provided such

1 services. All such orders shall contain words clearly informing the  
2 claimant that all awards and orders for payments under this Chapter  
3 are subject to the making of an appropriation by the Legislature to  
4 pay the claim, except as otherwise provided in Section 86.95 of this  
5 Chapter.

6 §86.90 Limitations upon award of compensation.

7 (a) No order for the payment of compensation shall be made  
8 under this Chapter unless the application has been made within  
9 eighteen (18) months after the date of injury, death or property  
10 damage.

11 (b) No compensation shall be awarded under this Chapter in an  
12 amount in excess of Ten Thousand Dollars (\$10,000).

13 §86.95 Criminal Injuries Compensation Fund; When Payment  
14 Authorized.

15 (a) There is hereby established a Criminal Injuries Compensation  
16 Fund (the "Fund") separate and apart from other funds of the  
17 government of Guam, from which the Commission may make payments as  
18 provided in Subsection (b) of this Section. The Attorney General  
19 shall be the certifying officer of the Fund, and all payments therefrom  
20 shall be paid by him upon order of the Commission.

21 (b) Where the Commission has made an award pursuant to this  
22 Chapter, the Commission shall make such payments from the Fund to  
23 or on behalf of the victim, or to or for the benefit of one or more of  
24 the dependents of a deceased victim, or to or for the benefit of other  
25 persons who have suffered pecuniary loss or incurred expenses on  
26 account of hospital, medical, funeral and burial expenses as a result of  
27 the victim's injury or death. Payments made pursuant to this Section  
28 shall not exceed the total amount of the award.

29 86.100 Recovery from collateral source. (a) In determining the  
30 amount of compensation to be awarded under this Chapter, the  
31 Commission shall deduct amounts or benefits received or to be received  
32 from any source, whether from the offender or from any person behalf  
33 of the offender, or from public or private funds, and which amounts  
34 or benefits result from or are in any manner, directly or indirectly,

1           attributable to the injury or death which gave rise to the award;  
2           provided, that no deduction shall be made for death benefits received  
3           or to be received under any insurance policy covering the life of a  
4           deceased victim.

5           (b) Where compensation is awarded under this Chapter and the  
6           person receiving the same also receives any sum required to be, and  
7           that has not been deducted under Subsection (a) of this Section, he  
8           shall refund to the government of Guam the lesser of the sum or the  
9           amount of the compensation paid to him under this Chapter.

10           §86.105 Legal advisor. The Attorney General shall serve as  
11           legal advisor to the Commission.

12           §86.110 Exemption from execution. No compensation payable  
13           under this Chapter shall, prior to actual receipt thereof by the person  
14           or beneficiary entitled thereto, or their legal representatives, be  
15           assignable or subject to execution, garnishment, attachment or other  
16           process whatsoever, including process to satisfy an order or judgment  
17           for support or alimony.

18           §86.115 Survival and Abatement. The rights of compensation  
19           created by this Chapter are personal and shall not survive the death  
20           of the person or beneficiary entitled thereto; provided, that if such  
21           death occurs after an application for compensation has been filed with  
22           the Commission, the proceeding shall not abate, but may be continued  
23           by the legal representative of the decedent's estate.

24           §86.120 Rule-making powers. In the performance of its  
25           functions, the Commission may adopt, amend and repeal, pursuant to  
26           the Administrative Adjudication Law, rules and regulations, not  
27           inconsistent with this Chapter, prescribing the procedures for  
28           conducting its business, the procedures to be followed in the filing of  
29           applications and the proceedings under this Chapter and such other  
30           matters as the Commission deems appropriate.

31           §86.125 Commission staff. Supervisory, administrative and  
32           clerical personnel necessary for the efficient functioning of the  
33           Commission may be appointed.

1           86.130 Annual report. The Attorney General shall transmit  
2 annually to the Governor and to the Legislature a report of the  
3 Commission's activities under this Chapter, including the name of each  
4 applicant, a brief description of the facts in each case, and the  
5 amount, if any, of compensation awarded. The Attorney General shall  
6 transmit the report, together with a tabulation of the total amount of  
7 compensation awarded, and a proposed bill appropriating funds  
8 necessary to replenish the Fund for the compensation awarded."

9           Section 6. A new Subsection (e) is added to §80.48, Chapter 80, Title  
10 9 Guam Code Annotated, to read:

11           "(e) The remaining balance of earnings by an inmate from  
12 participating in a Work Release Program shall be deposited into the  
13 Criminal Injuries Compensation Fund (the "Fund"). After complying  
14 with subsection (b) of this Section, associated with support of  
15 dependents and debts, the remaining balance shall be deposited in the  
16 Fund."

17           Section 7. Not later than ninety (90) days after the passage of this  
18 Act, any and all monies paid into or due and owing the Criminal Injuries  
19 Compensation Fund created by Public Law 16-86:1 (Civil Code of Guam,  
20 Division Fourth, Part I, Title II, Chapter III, Section 3361.18) as of  
21 December 31, 1986 shall be paid into the Criminal Injuries Compensation  
22 Fund created by this Act.

23           Section 8. Twenty Thousand Dollars (\$20,000) are appropriated from  
24 the General Fund to the Criminal Injuries Compensation Fund, to be paid  
25 into such fund not later than ninety (90) days after the passage of this  
26 Act.

27           Section 9. Nothing in this Act shall preclude a crime victim from  
28 bringing a private action to recover up to treble damages and attorneys  
29 fees from the criminal, and when the likelihood of recovery is found by the  
30 court having jurisdiction to be strong, it may appoint counsel for the  
31 victim.



TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 321  
Resolution No.     

Date: 3/7/90

QUESTION: \_\_\_\_\_

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. P. Aguon	✓			
E. P. Arriola	✓			
J. G. Bamba		✓		
M. Z. Bordallo	✓			
D. F. Brooks		✓		
H. D. Dierking	✓			
E. R. Duenas			✓	
E. M. Espaldon		✓		
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan		✓		
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth		✓		
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka		✓		
A. R. Unpingco		✓		

13 7 1

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) REGULAR SESSION

Introduced

Bill No. 291 (COR)

FEB 14 '89

Introduced by:

P.C. LUJAN *PL*

AN ACT REQUIRING VICTIM NOTIFICATION  
TO OFFENDER RELEASE.

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

2 Section 1. This act may be cited as the Victim Notification of  
3 Offender Release Act.

4 Section 2. As used in this act:

5 (a) "Offense Against the Person" means any of the offenses against  
6 a person described in 9 G.C.A. and includes any attempt to commit any  
7 of those offenses.

8 (b) "Prisoner" or "Parolee" means a person who has been convicted  
9 of an offense against the person.

10 (c) "Victim" means the person who was the victim of the offense  
11 against the person for which the prisoner or parolee was convicted and  
12 has submitted a written request for notice of the parole or final unconditional  
13 release of the prisoner or parolee.

14 Section 3. Notice of suspended sentence or probation.

15 (a) Whenever the court suspends the sentence of a defendant convicted  
16 of an offense against the person, or of an attempt to commit such an  
17 offense, or places such defendant on probation without requiring the  
18 serving of a term of imprisonment, the court shall provide written notice  
19 to each victim of such offense of the suspension of sentence or probation,  
20 as the case may be, whenever the victim has made a written request for  
21 such notice. Notice shall be given to the victim at the address given  
22 on the request for notice or such other address as may be provided to  
23 the court by the victim from time to time.

1 (b) Neither the failure of any territorial officer or employee  
2 to carry out the requirements of this section nor compliance with it  
3 shall subject the territory or the officer or employee to liability  
4 in any civil action. However, such failure may provide a basis for such  
5 disciplinary action as may be deemed appropriate by competent authority.

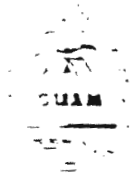
6 Section 4.

7 (a) Upon placing a prisoner on parole, upon the release of a  
8 parolee from parole, or upon the placement of a prisoner in a work release  
9 program, the authority shall give written notice of the parole, release  
10 of a parolee from parole, or placement in a work release program to  
11 each victim.

12 (b) Upon the final unconditional release from a correctional  
13 facility of a prisoner who has not been paroled or earlier discharged,  
14 the Department of Corrections shall give written notice  
15 of the release to each victim.

16 (c) The authority or department, as the case may be, shall provide  
17 written notice to the victim at the address given on the request  
18 for notice or such other address as may be provided by the victim from  
19 time to time.

20 (d) Neither the failure of any territorial officer or employee  
21 to carry out the requirements of this section nor compliance with it  
22 shall subject the territory or the officer or employee to liability in  
23 any civil action. However, such failure may provide a basis for such  
24 disciplinary action as may be deemed appropriate by competent authority.



PILAR C. LUJAN  
SENATOR • LEGISLATIVE SECRETARY

February 27, 1990

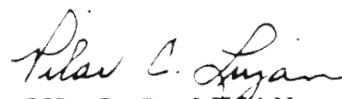
The Honorable Joe T. San Agustin  
Speaker, Twentieth Guam Legislature  
163 Chalan Santo Papa  
Agana, Guam 96910

VIA: Chairperson, Committee on Rules

Dear Mr. Speaker:

The **Committee on Judiciary and Criminal Justice**, to which was referred Bill No. 321, wishes to report its findings, recommendations and **UNANIMOUS DECISION FOR PASSAGE** of **Substitute Bill No. 321** as substituted by the Committee.

A copy of the Committee Report and all pertinent documents are attached for your information.

  
PILAR C. LUJAN

Attachment

COMMITTEE ON JUDICIARY  
AND CRIMINAL JUSTICE

Committee Report  
On

BILL NO. 321 - AN ACT REQUIRING VICTIM  
NOTIFICATION OF OFFENDER RELEASE.

PREFACE

The public hearing on Bill No. 321 was heard by the Committee on Judiciary and Criminal Justice when it convened at 9:00 AM, Friday June 30, 1989 in the Legislative Session Hall.

The hearing was called to order by the Chairperson Senator Pilar Lujan. Also present were Committee Members Ted S. Nelson, Martha Ruth and Edward R. Duenas

OVERVIEW

In continuing efforts to expand victims' rights, the Judiciary and Criminal Justice Committee Chairwoman introduced Bill 321.

Known as the "Victim Notification of Offender Release Act," the measure calls for criminal justice authorities to inform crime victim or their survivors of the release or suspension of sentence(s) of the offender(s) who perpetrated or attempted such crime(s) defined in the Criminal Code.

Presently, Executive Order 88-26 exists requiring victim notification whenever a prisoner is released on parole or full-time.

TESTIMONY

Attorney General Elizabeth Barrett-Anderson appeared before the Committee in full support of the measure (ATTACHMENT I). The Attorney General testified that "it is important that the victim be kept fully informed of the process leading up to prosecution, time of sentencing, and as Bill 321 would provide, at any time after sentencing with regard to release, suspension of sentence, or probation."

Calling the measure a "logical progression in our drive to improve the rights of victims of crime," the Attorney General urged swift passage.

The Attorney General added that the measure should be passed to accompany Executive Order 88-26 in the event review of the Executive Order "does not specifically require notification at the time of parole."

Then Chief Prosecutor William Fitzgerald expressed support for the measure and pointed out the merit of notification upon victim request to prevent revival of such a traumatic ordeal.

Mr. Patrick Darst, President of the organization called Victims Advocates Reaching Out (VARO), appeared before the Committee commending introduction of the measure and urging passage.

Mr. Darst recommended modification to the measure to include specified time for notification and penalty imposed upon government agents for failure to fulfill notification obligations.

Ms. Diane Boone, a member of VARO, also testified in favor of the measure and the suggested modifications.

Ms. Boone cited that her son was a crime victim who suffered anguish by being exposed to the perpetrator (it must be noted that the incident took place prior to trial). Faulting government employees with inappropriate procedures in that incident, Ms. Boone urged accountability and responsibility on the part of government agents.

Acting Department of Corrections Director Angel Sablan submitted written testimony (ATTACHMENT II).

Acting Director Sablan pointed out that parole work "concerns itself with crime victims or victim's next-of-kin, as a matter of compliance with statutes and an Executive Order.

Presently, under Executive Order 88-26, crime victims are notified whenever a prisoner is to be released on parole or to be released full-time from the Department of Corrections. In cases of parole, victims or next-of-kin are recipients of a notification from the Department of Corrections (ATTACHMENTS III).

Further, under Section 80.78 (f), Title 9, Guam Code Annotated, victims may provide comment for documented submission to the Territorial Parole Board during pre-parole investigation and final consideration.

The Acting Director expressed support for Bill 321 but suggested amendments.

The modifications are as follows:

Section 2(c) "Victim" means the person who was the victim of the offense against the person for which the prisoner or parolee was convicted, or, where the victim dies as a result of the offense, the deceased victim's next-of-kin, who has submitted a written request for notice of the parole or final unconditional release of the prisoner or parolee;

Section 4(a) Upon placing a prisoner on parole, upon the release of a parolee from parole, or upon the placement of a prisoner in a work release or study release program, the releasing authority, the Department of Corrections or the Territorial Parole Board shall give written notice of the parole, release of a parolee from parole, or placement in a work release or study release program to each victim;

Section 4(c) The Territorial Parole Board or Department Corrections, as the case may be, shall provide written notice to victim at the address given on the request for notice or such other address as may be provided by the victim from time to time.

Presiding Judge Alberto C. Lamorena III submitted written testimony in support of the measure (ATTACHMENT IV). The Presiding Judge, however, recommended modification to consider the Superior court's existing policy allowing victims to request for certain documents by contacting the Court's Records Manager. "Upon receipt of the victim's request for a certified copy of the Judgment will just as easily achieve the bill's purpose," the Presiding Judge wrote.

Additionally, the Presiding Judge recommended that additional notice be provided by the Attorney General's Office or the Probation Office for administrative efficiency. "The Attorney General's Office initiates the case file with the court and is better informed to act as a relations officer of such a release of information and the Probation Office is responsible for maintaining all documents pertaining to probationers," the Judge pointed out.

**COMMITTEE FINDINGS**

Committee Member Martha C. Ruth sought clarification on the definition of "victim" and queried if it included survivors or next-of-kin. The Attorney General noted interpretation of the definition would be liberal and include survivors or next-of-kin.

However, Committee Member Ruth expressed concern that such interpretation could change with a different Attorney General and urged specificity.

Committee Member Edward R. Duenas queried how much impact a victim would have in determining the fate of a convict's sentence. The Chief Prosecutor William Fitzgerald pointed out that the measure only appeals to people who are sentenced.

Committee Member Duenas suggested more victim input in sentencing procedures and then Chief Prosecutor Fitzgerald noted the significant impact a victim's survivor had in the sentencing of the Flaherty case.

On the topic of providing criminal or civil sanctions on government employees for failure to provide notification, the Attorney General noted the diligence and strong efforts of all public servants to execute their duties.

At a subsequent date, the Committee staff queried the Department of Corrections on the time frame of notification to victims or next-of-kin in parole proceedings or release. The Director of Corrections informed the Committee staff that standard operating procedure is notification one month prior to parole hearing or release.

COMMITTEE  
RECOMMENDATIONS

The Committee recommends passage of Bill 321 with the changes suggested by Acting Director of Corrections Angel Sablan and Superior Court Presiding Judge Alberto C. Lamorena III. Refer to Substitute Bill 321. (ATTACHMENT V).

Additionally, the Committee recommends incorporation of provisions to revive the defunct Criminal Injuries Compensation Commission.



TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) REGULAR SESSION

Substitute Bill No. 321 (COR)

Introduced by:  
As Substituted by:

P. C. Lujan  
Committee on Judiciary  
and Criminal Justice

AN ACT REQUIRING VICTIM NOTIFICATION  
TO OFFENDER RELEASE AND TO REACTIVATE  
THE CRIMINAL INJURIES COMPENSATION  
COMMISSION.

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

2 Section 1. This act may be cited as the Victim Notification of Offende  
3 Act.

4 Section 2. As used in this act:

5 (a) "Offense Against the Person" means any of the offenses against  
6 described in 9 G.C.A. and includes any attempt to commit any of those offe

7 (b) "Prisoner" or "Parolee" means a person who has been convicted  
8 offense against the person.

9 (c) "Victim" means the person who was the victim of the offense aga  
10 person for which the prisoner or parolee was convicted, and has subm  
11 written request for notice of the parole or final unconditional release  
12 prisoner or parolee.

13 Section 3. Notice of suspended sentence or probation.

14 (a) Whenever the court suspends the sentence of a defencant convicted  
15 offense against the person, or of an attempt to commit such an offense, or  
16 such defencant on probation without requiring the serving of a te  
17 imprisonment, upon the victim's request or certified copy of the Judgeme  
18 court shall provide written notice to each victim of such offense of the susp  
19 of sentence or probation, as the case may be, whenever the victim has n  
20 written request for such notice. Notices shall be given to the victim at the a  
21 given on the request for notice or such other address as may be provided to

1 [court] Department of Law or Department of Corrections' Probation Office by  
2 victim from time to time.

3 (b) Neither the failure of any territorial officer or employee to carry out  
4 requirements of this section nor compliance with it shall subject the territory or  
5 officer or employee to liability in any civil action. However, such failure  
6 provide a basis for such disciplinary action as may be deemed appropriate  
7 competent authority.

8 **Section 4.**

9 (a) Upon placing a prisoner on parole, upon the release of a parolee to  
10 parole, or upon the placement of a prisoner in a work release or study rele  
11 program, the releasing authority shall give written notice of the parole, release  
12 a parolee from parole, or placement in a work release program to each victim.

13 (b) Upon the final unconditional release from a correctional facility of  
14 prisoner who has not been paroled or earlier discharged, the Department  
15 Corrections shall give written notice of the release to each victim.

16 (c) The [authority] Territorial Parole Board or [d]Department of Corrections  
17 as the case may be, shall provide written notice to the victim at the address give  
18 on the request for notice or such other address as may be provided by the victi  
19 from time to time.

20 (d) Neither the failure of any territorial officer or employee to carry out th  
21 requirements of this section nor compliance with it shall subject the territory or th  
22 officer or employee to liability in any civil action. However, such failure may  
23 provide a basis for such disciplinary action as may be deemed appropriate by  
24 competent authority.

25 **Section 5.** Chapter 86 is added to Title 9 of the Guam Code Annotated to  
26 read:

27 "CHAPTER 86

28 COMPENSATION FOR DAMAGES FROM CRIMINAL ACTIVITIES

§86.10 Definitions. As used in this Chapter:

(a) 'Child' means an unmarried person who is under eighteen (18) years of age and includes a stepchild or an adopted child;

(b) 'Commission' means the Criminal Injuries Compensation Commission established by this Chapter;

(c) 'Dependents' means such relatives of a deceased victim who wholly or partially dependent upon his income at the time of his death would have been so dependent but for the incapacity due to the injury which the death resulted and includes the child of the victim born after death;

(d) 'Injury' means actual bodily harm and, in respect of a victim, includes pregnancy, and mental or nervous shock;

(e) 'Private citizen' means any natural person other than a peace officer who is actively engaged in the performance of his duties;

(f) 'Relative' means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents;

(g) 'Victim' means a person who is injured or killed by any act or omission of any other person coming within the description of any of the crimes specified in Section 86.55 of this Chapter; and

(h) 'Person' means a natural person.

§86.15 Creation of the Criminal Injuries Compensation Commission. There shall be a Criminal Injuries Compensation Commission which shall be composed of five (5) members appointed by the Governor with the advice and consent of the Legislature. One (1) member of the Commission shall be an attorney who has been admitted to practice in the Territory of Guam for at least five (5) years. The Commission is placed within the Department of Law for administrative purposes. Annually, the members shall elect a chairperson of

1           §86.20 Tenure and Compensation of Members. The term  
 2 of office of each member of the Commission shall be four (4)  
 3 years or until his successor is appointed except that the  
 4 terms of office of the members first taking office shall expire  
 5 as designated by the Governor at the time of appointment as  
 6 follows: one (1) at the end of one (1) year, one (1) at the  
 7 end of two (2) years, one (1) at the end of three (3) years,  
 8 and two (2) at the end of four (4) years. Any member  
 9 appointed to fill the vacancy occurring prior to the expiration  
 10 of the term for which his predecessor was appointed, shall be  
 11 appointed for the remainder of the term. A vacancy in the  
 12 Commission shall not affect its powers.

13           If any member of the Commission is unable to act  
 14 because of absence, illness or other sufficient cause, the  
 15 Governor may make a temporary appointment, and such  
 16 appointee shall have all the powers and duties of a regular  
 17 member of the Commission for the period of his appointment.

18           §86.25 Powers and Procedures of Commission. Upon an  
 19 application made to the Commission under this Chapter, the  
 20 Commission shall fix a time and place for a hearing on such  
 21 application and shall cause notice thereof to be given to the  
 22 applicant. The Commission may hold such hearings, sit and  
 23 act as such times and places, and take such testimony as the  
 24 Commission may deem advisable. Any three (3) members shall  
 25 constitute a quorum. The concurring vote of three (3)  
 26 members shall be necessary to take any action. Any member  
 27 of the Commission may administer oaths or affirmations to

1 witnesses appearing before the Commission. The Commission  
 2 shall have such powers of subpoena and compulsion of  
 3 attendance of witnesses and production of documents and of  
 4 examination of witnesses as are conferred upon the Superior  
 5 Court. Subpoenas shall be issued under the signature of the  
 6 Chairman. The Superior Court may, upon the application of  
 7 the Commission, enforce the attendance and testimony of any  
 8 witness and the production of any documents so subpoenaed.  
 9 Subpoena and witness fees and mileage shall be the same as  
 10 in criminal cases in the court, and shall be payable from  
 11 funds appropriated for expenses of administration.

12 §86.30 Hearings and Evidence. Where any application  
 13 is made to the Commission, the applicant and the Commission's  
 14 legal advisor shall be entitled to appear and be heard. Any  
 15 other person may appear and be heard who satisfied the  
 16 Commission that he has a substantial interest in the  
 17 proceedings. In any case in which the person entitled to  
 18 make an application is a child, the application may be made on  
 19 his behalf by his parent or legal guardian. In any case in  
 20 which the person entitled to make an application is mentally  
 21 defective, the application may be made on his behalf by his  
 22 guardian or such other individual authorized to administer the  
 23 estate.

24 Where under this Chapter any person is entitled to  
 25 appear and be heard by the Commission, that person may  
 26 appear in person or by his attorney. All hearings shall be  
 27 open to the public unless, in a particular case, the

1 commission determines that the hearing, or a portion thereof,  
2 should be held in private, having regard to the fact that the  
3 offender has not been convicted or to the interest of the  
4 victim of an alleged sexual offense.

5 Every person appearing under this Section shall have  
6 the right to produce evidence and to cross-examine witnesses.  
7 The Commission may receive as evidence any statement,  
8 document, information or matter that may, in the opinion of  
9 the Commission, contribute to its functions under this  
10 Chapter, whether or not such statement, document,  
11 information or matter would be admissible in a court of law.

12 If any person has been convicted of any offense with  
13 respect to an act or omission on which a claim under this  
14 Chapter is based, proof of that conviction shall, unless an  
15 appeal against the conviction or a petition for a hearing in  
16 respect of the charge is pending or a new trial or rehearing  
17 has been ordered, be taken as conclusive evidence that the  
18 offense has been committed.

19 §86.35 Medical Examination. The Commission may  
20 appoint an impartial licensed physician to examine any person  
21 making application under this Chapter, and the fees for the  
22 examination shall be paid from funds appropriated for  
23 expenses of administration.

24 §86.40 Attorney Fees. The Commission may, as part of  
25 any order entered under this Chapter, determine and allow  
26 reasonable attorney fees, which if the award of compensation  
27 is more than One Thousand Dollars (\$1,000) shall not exceed

1 fifteen percent (15%) of the award, to be paid out of but not  
2 in addition to the award, to the attorneys representing the  
3 applicant, provided that the amount of the attorney fees  
4 shall not, in any event, exceed the award of compensation  
5 remaining after deducting that portion thereof for expenses  
6 actually incurred by the claimant.

7 Any attorney who charges, demands, receives or collects  
8 for services rendered in connection with any proceedings  
9 under this Chapter any amount in excess of that allowed  
10 under this Section, if any compensation is paid, shall be  
11 fined not more than Two Thousand Dollars (\$2,000).

12 §86.45 Reconsideration by Commission; Judicial Review.

13 (a) The Commission may, on its own motion or on the  
14 application of any person aggrieved by an order or decision  
15 of the Commission, reconsider the order or decision and  
16 revoke, confirm and verify the order or decision, based upon  
17 the findings of the Commission.

18 (b) Any person aggrieved by an order or decision of  
19 the Commission on the sole ground that the order or decision  
20 was in excess of the Commission's authority or jurisdiction,  
21 shall have a right of appeal to the Superior Court, provided  
22 the appeal is filed with the Commission within thirty (30)  
23 days after service of an original or a certified copy of such  
24 order or decision. Except as otherwise provided in this  
25 Section, orders and decisions of the Commission shall be  
26 conclusive and not subject to judicial review.

27 §86.50 Eligibility for Compensation. (a) In the event

1 any person is injured or killed by any act or omission of any  
2 other person coming within the criminal jurisdiction of the  
3 Territory after September 30, 1930, which act or omission is  
4 within the description of the crimes enumerated in Section  
5 86.55, the Commission may, in its discretion, upon an  
6 application, order the payment of compensation in accordance  
7 with this Chapter:

8 (1) To or for the benefit of the victim;

9 (2) To any person responsible for the maintenance  
10 of the victim, where that person has suffered pecuniary  
11 loss or incurred expenses as a result of the victim's  
12 injury or death;

13 (3) In the case of the death of the victim, to or  
14 for the benefit of any one or more of the dependents of  
15 the deceased victim; or

16 (4) To a parent of an adult deceased victim, or to  
17 an adult son or daughter of a deceased victim, where  
18 the parent or adult son or daughter has incurred  
19 expenses on account of hospital, medical, funeral and  
20 burial expenses as a result of the victim's injury and  
21 death.

22 (b) For the purpose of this Chapter, a person shall be  
23 deemed to have intentionally committed an act or omission  
24 notwithstanding that by reason of age, insanity, drunkenness  
25 or otherwise he was legally incapable of forming a criminal  
26 intent.

27 (c) In determining whether to make an order under this



1 Section, the Commission may consider any circumstances it  
2 determines to be relevant, and the Commission shall consider  
3 the behavior of the victim, and whether, because of  
4 provocation or otherwise, the victim bears any share of  
5 responsibility for the crime that caused his injury or death  
6 and the Commission shall reduce the amount of compensation  
7 in accordance with its assessment of the degree of such  
8 responsibility attributable to the victim.

9 (d) An order may be made under this Section whether  
10 or not any person is prosecuted for or convicted of a crime  
11 arising out of an act or omission described in Subsection (a)  
12 of this Section, provided an arrest has been made or such act  
13 or omission has been reported to the police without undue  
14 delay. No order may be made under this Section unless the  
15 Commission finds that:

- 16 (1) the act or omission did occur; and
- 17 (2) the injury or death of the victim resulted from  
18 the act or omission.

19 Upon application from either the Attorney General or the  
20 Director of the Guam Police Department, the Commission may  
21 suspend proceedings under this Chapter for such period as it  
22 deems desirable on the ground that a prosecution for a crime  
23 arising out of the act or omission has been commenced or is  
24 imminent, or that release of the investigation report would be  
5 detrimental to the public interest.

§86.55 Violent Crimes. (a) The crimes to which this  
Chapter applies are the following and no other:

COPIED AT GOVERNMENT EXPENSE

- 1 (1) Aggravated Murder (Criminal and Correctional
- 2 Code, Section 16.30);
- 3 (2) Murder (Criminal and Correctional Code,
- 4 Section 16.40);
- 5 (3) Manslaughter (Criminal and Correctional Code,
- 6 Section 16.50);
- 7 (4) Aggravated Assault (Criminal and Correctional
- 8 Code, Section 19.20);
- 9 (5) Assault (Criminal and Correctional Code,
- 10 Section 19.30);
- 11 (6) Kidnapping (Criminal and Correctional Code,
- 12 Section 22.20);
- 13 (7) Felonious Restraints (Criminal and Correctional
- 14 Code, Section 22.30);
- 15 (8) Child Stealing (Criminal and Correctional Code,
- 16 Section 22.40);
- 17 (9) Custodial Interference (Criminal and
- 18 Correctional Code, Section 22.50);
- 19 (10) Criminal Sexual Conduct in the First Degree
- 20 (Criminal and Correctional Code, Section 25.15);
- 21 (11) Criminal Sexual Conduct in the Second Degree
- 22 (Criminal and Correctional Code, Section 25.20);
- 23 (12) Criminal Sexual Conduct in the Third Degree
- 24 (Criminal and Correctional Code, Section 25.25);
- 25 (13) Criminal Sexual Conduct in the Fourth Degree
- 26 (Criminal and Correctional Code, Section 25.30);
- 27 (14) Assault with Intent to Commit Criminal Sexual

1 Conduct (Criminal and Correctional Code, Section 25.35)

2 (b) For the purposes of this Chapter, the operation of  
3 a motor vehicle, boat or aircraft that results in an injury or  
4 death shall not constitute a crime, unless the injuries were  
5 intentionally inflicted through the use of such vehicle, boat  
6 or aircraft.

7 (c) Any fine imposed pursuant to Section 80.50 of Title  
8 9 of the Guam Code Annotated upon conviction of any of the  
9 crimes specified in Subsection (a) of this Section shall be  
10 paid into the Criminal Injuries Compensation Fund established  
11 by Section 86.95 of this Chapter.

12 §86.60 Award of Compensation. The Commission may  
13 order only from available balances in the Criminal Injuries  
14 Compensation Fund the payment of compensation under this  
15 Chapter for:

16 (1) Expenses actually and reasonably incurred as a  
17 result of the injury or death of the victim;

18 (2) Loss to the victim of earning power as a result  
19 of total or partial incapacity;

20 (3) Pecuniary loss to the dependents of the  
21 deceased victim;

22 (4) Pain and suffering to the victim; and

23 (5) Any other pecuniary loss directly resulting  
24 from the injury or death of the victim which the  
25 Commission determines to be reasonable and proper.

26 §86.65 Relationship to Offender. No compensation shall  
27 be awarded, except for expenses specified in Section 86.60

1 (1) of this Chapter, if the victim was at the time of his  
2 injury or death living with the offender as spouse or as a  
3 member of the offender's household.

4 §86.70 Recovery from Offender. Whenever any person  
5 is convicted of an offense that includes any crime enumerated  
6 in Section 86.55 of this Chapter and an order or the payment  
7 of compensation is or has been made under this Chapter for  
8 injury or death resulting from the act or omission constituting  
9 such offense, the Commission may institute a derivative action  
10 against the person or against any person liable at law on his  
11 behalf, in the name of the victim or such of his dependents  
12 as have been awarded compensation under this Chapter in the  
13 Superior Court for such damages as may be recoverable at  
14 common law by the victim or such dependents without  
15 reference to the payment of compensation. The court shall  
16 have jurisdiction to hear, determine and render judgment in  
17 any such action. The time for the occurrence of the act or  
18 omission until conviction of the offense and, thereafter, as  
19 long as the offender is in confinement for conviction of the  
20 offense, shall not constitute any part of the time limited for  
21 the commencement of the action by the Commission under the  
22 applicable statute of limitations. Any recovery in the action  
23 shall belong to the Territory, provided, that the Commission  
24 shall amend its order of compensation to provide for the  
25 payment of any portion of the recovery in excess of the  
26 amount of compensation prescribed in the order to any of the  
27 persons entitled to receive compensation under Section 86.50

1 of this Chapter in such proportions and upon such terms  
2 the Commission shall deem appropriate.

3 §86.75 Eligibility for Compensation. In the event  
4 private citizen incurs injury or property damage  
5 preventing the commission of a crime within the Territory  
6 apprehending a person who has committed a crime within  
7 Territory, or in materially assisting a peace officer who  
8 engaged in the prevention or attempted prevention of such  
9 crime or the apprehension or attempted apprehension of  
10 a person, the Commission may, in its discretion, upon  
11 application, order the payment of compensation in accordance  
12 with this Chapter:

13 (1) To or for the benefit of the private citizen;

14 (2) To any person responsible for the maintenance  
15 of the private citizen, where that person has suffered  
16 pecuniary loss or incurred expenses as a result of the  
17 private citizen's injury.

18 §86.80 Award of Compensation. The Commission may  
19 order the payment of compensation under this Chapter for:

20 (1) Expenses actually and reasonably incurred as  
21 result of the injury of the private citizen;

22 (2) Pain and suffering to the private citizen;

23 (3) Loss to the private citizen of earning power as  
24 a result of total or partial incapacity; and

25 (4) Pecuniary loss to the private citizen directly  
26 resulting from damage to his property.

27 §86.85 Terms of Order. Except as otherwise provided

1 in this Chapter, any order for the payment of compensation  
 2 under this Chapter may be made on such terms as the  
 3 Commission deems appropriate. Without limiting the generality  
 4 of the preceding sentence, the order may provide for  
 5 apportionment of the compensation, for the holding of the  
 6 compensation or any part thereof in trust, for the payment of  
 7 the compensation in a lump sum or periodic installments, and  
 8 for the payment of compensation for hospital, medical, funeral  
 9 and burial expenses directly to the person who has provided  
 10 such services. All such orders shall contain words clearly  
 11 informing the claimant that all awards and orders for  
 12 payments under this Chapter are subject to the making of an  
 13 appropriation by the Legislature to pay the claim, except as  
 14 otherwise provided in Section 85.95 of this Chapter.

15 §86.90 Limitations upon Award of Compensation.

16 (a) No order for the payment of compensation shall be  
 17 made under this Chapter unless the application has been made  
 18 within eighteen (18) months after the date of injury, death or  
 19 property damage.

20 (b) No compensation shall be awarded under this  
 21 Chapter in an amount in excess of Ten Thousand Dollars  
 22 (\$10,000).

23 §86.95 Criminal Injuries Compensation Fund: When  
 24 Payments Authorized.

25 (a) There is established a Criminal Injuries  
 26 Compensation Fund from which the Commission may make  
 27 payments as provided in Subsection (b) of this Section. The

Attorney General shall be the certifying officer of  
and all payments therefrom shall be paid by him up  
of the Commission.

(b) Where the Commission has made an award pu  
to this Chapter, the Commission shall make such payment  
or on behalf of the victim, or to or for the benefit of one  
more of the dependents of a deceased victim, or to or for t  
benefit of other persons who have suffered pecuniary loss o  
incurred expenses on account of hospital, medical, funeral  
and burial expenses as a result of the victim's injury or  
death. Payments made pursuant to this Section shall not  
exceed the total amount of the award.

§86.100 Recovery from Collateral Source. (a) In  
determining the amount of compensation to be awarded under  
this Chapter, the Commission shall deduct amounts or benefits  
received or to be received from any source, whether from the  
offender or from any person on behalf of the offender, or  
from public or private funds, and which amounts or benefits  
result from or are in any manner, directly or indirectly,  
attributable to the injury or death which gave rise to the  
award; provided that no deduction shall be made for death  
benefits received or to be received under any insurance  
policy covering the life of a deceased victim.

(b) Where compensation is awarded under this Chapter  
and the person receiving same also receives any sum required  
to be, and that has not been deducted under Subsection (a)  
of this Section, he shall refund to the Territory the lesser of

COPIED AT GOVERNMENT EXPENSE

1 the sum or the amount of the compensation paid to him under  
2 this Chapter.

3 §86.105 Legal Advisor. The Attorney General shall  
4 serve as legal advisor to the Commission.

5 §86.110 Exemption from Execution. No compensation  
6 payable under this Chapter shall, prior to actual receipt  
7 thereof by the person or beneficiary entitled thereto, or their  
8 legal representatives, be assignable or subject to execution,  
9 garnishment, attachment or other process whatsoever,  
10 including process to satisfy an order or judgment for support  
11 or alimony.

12 §86.115 Survival and Abatement. The rights of  
13 compensation created by this Chapter are personal and shall  
14 not survive the death of the person or beneficiary entitled  
15 thereto, provided that if such death occurs after an  
16 application for compensation has been filed with the  
17 Commission, the proceeding shall not abate, but may be  
18 continued by the legal representative of the decedent's  
19 estate.

20 §86.120 Rule-making Powers. In the performance of its  
21 functions, the Commission may adopt, amend and repeal rules  
22 and regulations, not inconsistent with this Chapter,  
23 prescribing the procedures for conducting its business, the  
24 procedures to be followed in the filing of applications and the  
25 proceedings under this Chapter and such other matters as the  
26 Commission deems appropriate.

27 §86.125 Commission Staff. Supervisory, administrative



1 and clerical personnel necessary for the efficient functioning of the Commis  
2 may be appointed.

3 §36.130 Annual Report. The Attorney General shall transmit annually  
4 the Governor and to the Legislature a report of the Commission's activ  
5 under this Chapter including the name of each applicant, a brief descriptio  
6 the facts in each case, and the amount, if any, of compensation awarded.  
7 Attorney General shall transmit the report, together with a tabulation of  
8 total amount of compensation awarded, and a legislative bill appropriat  
9 funds necessary to replenish the Criminal Injuries Compensation Fund for  
10 compensation awarded."

11 **Section 6.** A new Section 80.48 (e) is added to Chapter 80 of Title 9 Gu  
12 Code Annotated to read:

13 "§80.48 (e). The remaining balance of earnings by an inmate fr  
14 participating in a Work Release Program shall be deposited into a Crimi.  
15 Injuries Compensation Fund. After complying with subsection (b) of t  
16 Section, associated with support of dependents and debts, the remaini  
17 balance shall be deposited for the Criminal Injuries Compensation Fu  
18 established in this Act."

19 **Section 7.** Not later than ninety (90) days after the passage of this Act, a  
20 and all monies paid into or due and owing the Criminal Injuries Compensation Fur  
21 created by Public Law 16-86:1 (Civil Code of Guam, Division Fourth, Part I, Tit  
22 II, Chapter III, Section 3361.18) as of December 31, 1986 shall be paid into th  
23 Criminal Injuries Compensation Fund created by this Act.

24 **Section 8.** The sum of Twenty Thousand Dollars (\$20,000.00) is appropriate  
25 from the General Fund to the Criminal Injuries Compensation Fund and is to b  
26 implemented not later than ninety (90) days after the passage of this Act.

# COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

## On Report

BILL NO. 321 - AN ACT REQUIRING VICTIM NOTIFICATION OF OFFENDER RELEASE.

### PREFACE

The public hearing on Bill No. 321 was heard by the Committee on Judiciary and Criminal Justice when it convened at 9:00 AM, Friday June 30, 1989 in the Legislative Session Hall.

The hearing was called to order by the Chairperson Senator Pilar C. Lujan. Also present were Committee Members Ted S. Nelson, Martha C. Ruth and Edward R. Duenas

### OVERVIEW

In continuing efforts to expand victims' rights, the Judiciary and Criminal Justice Committee introduced Bill 321.

Known as the "Victim Notification of Offender Release Act," the measure calls for criminal justice authorities to inform crime victims or their survivors of the release or suspension of sentence(s) of the offender(s) who perpetrated or attempted such crime(s) defined in the Criminal Code.

Presently, Executive Order 88-26 exists requiring victim notification whenever a prisoner is released on parole or full-time.

### TESTIMONY

Attorney General Elizabeth Barrett-Anderson appeared before the Committee in full support of the measure (ATTACHMENT I). The Attorney General testified that "it is important that the victim be kept fully informed of the process leading up to prosecution, time of sentencing, and as Bill 321 would provide, at any time after sentencing with regard to release, suspension of sentence, or probation."

Calling the measure a "logical progression in our drive to improve the rights of victims of crime," the Attorney General urged swift passage.

The Attorney General added that the measure should be passed to accompany Executive Order 88-26 in the event review of the Executive Order "does not specifically require notification at the time of parole."

Then Chief Prosecutor William Fitzgerald expressed support for the measure and pointed out the merit of notification upon victim request to prevent revival of such a traumatic ordeal.

Mr. Patrick Darst, President of the organization called Advocates Reaching Out (VARO), appeared before the Commission commending introduction of the measure and urging passage.

Mr. Darst recommended modification to the measure to its specified time for notification and penalty imposed upon government agents for failure to fulfill notification obligations.

Ms. Diane Boone, a member of VARO, also testified in favor of the measure and the suggested modifications.

Ms. Boone cited that her son was a crime victim who suffered a great deal by being exposed to the perpetrator (it must be noted that the incident took place prior to trial). Faulting government employees with inappropriate procedures in that incident, Ms. Boone placed accountability and responsibility on the part of government agents.

Acting Department of Corrections Director Angel Sablan submitted written testimony (ATTACHMENT II).

Acting Director Sablan pointed out that parole work "concerns only those with crime victims or victim's next-of-kin, as a matter of compliance with statutes and an Executive Order.

Presently, under Executive Order 88-26, crime victims are notified whenever a prisoner is to be released on parole or to be released full-time from the Department of Corrections. In cases of parole victims or next-of-kin are recipients of a notification from the Department of Corrections (ATTACHMENTS III).

Further, under Section 80.78 (f), Title 9, Guam Code Annotated, victims may provide comment for documented submission to the Territorial Parole Board during pre-parole investigation and final consideration.

The Acting Director expressed support for Bill 321 but suggested amendments.

The modifications are as follows:

Section 2(c) "Victim" means the person who was the victim of the offense against the person for which the prisoner or parolee was convicted, or, where the victim dies as a result of the offense, deceased victim's next-of-kin, who has submitted a written request for notice of the parole or final unconditional release of the prisoner or parolee;

Section 4(a) Upon placing a prisoner on parole, upon the release of a parolee from parole, or upon the placement of a prisoner in a work release or study release program, the releasing authority, Department of Corrections or the Territorial Parole Board shall give written notice of the parole, release of a parolee from parole, or placement in a work release or study release program to each victim.

Section 4(c) The [authority] Territorial Parole Board or [department] Department of Corrections, as the case may be, shall provide written notice to the victim at the address given on the request for notice such other address as may be provided by the victim from time to time

Presiding Judge Alberto C. Lamorena III submitted written testimony support of the measure (ATTACHMENT IV). The Presiding Judge, however, recommend modification to consider the Superior court's existing policy allowing victims to request for certain documents by contacting the Court's Records Manager. "Upon receipt of the victim's request, a certified copy of the Judgment will just as easily achieve the bill's purpose," the Presiding Judge wrote.

Additionally, the Presiding Judge recommended that additional notice be provided by the Attorney General's Office or the Probation Office for administrative efficiency. "The Attorney General's Office initiates the case file with the court and is better informed to act as a relations officer of such a release of information and the Probation Office is responsible for maintaining all documents pertaining to probationers," the Judge pointed out.

**COMMITTEE FINDINGS**

Committee Member Martha C. Ruth sought clarification on the definition of "victim" and queried if it included survivors or next-of-kin. The Attorney General noted interpretation of the definition would be liberal and include survivors or next-of-kin.

However, Committee Member Ruth expressed concern that such interpretation could change with a different Attorney General and urged specificity.

Committee Member Edward R. Duenas queried how much impact a victim would have in determining the fate of a convict's sentence. Then Chief Prosecutor William Fitzgerald pointed out that the measure only appeals to people who are sentenced.

Committee Member Duenas suggested more victim input in sentencing procedures and then Chief Prosecutor Fitzgerald noted the significant impact a victim's survivor had in the sentencing of the Flaherty case.

On the topic of providing criminal or civil sanctions on government employees for failure to provide notification, the Attorney General noted the diligence and strong efforts of all public servants to execute their duties.

At a subsequent date, the Committee staff queried the Department of Corrections on the time frame of notification to victims or next-of-kin in parole proceedings or release. The Director of Corrections informed the Committee staff that standard operating procedure is notification one month prior to parole hearing or release.

COMMITTEE  
RECOMMENDATIONS

The Committee recommends passage of Bill 321 with the change suggested by Acting Director of Corrections Angel Sablan and Superior Court Presiding Judge Alberto C. Lamorena III. Refer to Substitute Bill 321. (ATTACHMENT V).

Additionally, the Committee recommends incorporation of provisions to revive the defunct Criminal Injuries Compensation Commission.

*Introduced*

Bill No. 921

FEB 14 89

Introduced by:

P.C. LUJAN *PL*

AN ACT REQUIRING VICTIM NOTIFICATION  
TO OFFENDER RELEASE.

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

2 Section 1. This act may be cited as the Victim Notification of  
3 Offender Release Act.

4 Section 2. As used in this act:

5 (a) "Offense Against the Person" means any of the offenses against  
6 a person described in 9 G.C.A. and includes any attempt to commit any  
7 of those offenses.

8 (b) "Prisoner" or "Parolee" means a person who has been convicted  
9 of an offense against the person.

10 (c) "Victim" means the person who was the victim of the offense  
11 against the person for which the prisoner or parolee was convicted and  
12 has submitted a written request for notice of the parole or final unconditional  
13 release of the prisoner or parolee.

14 Section 3. Notice of suspended sentence or probation.

15 (a) Whenever the court suspends the sentence of a defendant convicted  
16 of an offense against the person, or of an attempt to commit such an  
17 offense, or places such defendant on probation without requiring the  
18 serving of a term of imprisonment, the court shall provide written notice  
19 to each victim of such offense of the suspension of sentence or probation,  
20 as the case may be, whenever the victim has made a written request for  
21 such notice. Notice shall be given to the victim at the address given  
22 on the request for notice or such other address as may be provided to  
23 the court by the victim from time to time.

1 (b) Neither the failure of any territorial officer or employee  
2 to carry out the requirements of this section nor compliance with it  
3 shall subject the territory or the officer or employee to liability  
4 in any civil action. However, such failure may provide a basis for such  
5 disciplinary action as may be deemed appropriate by competent authority.

6 Section 4.

7 (a) Upon placing a prisoner on parole, upon the release of a  
8 parolee from parole, or upon the placement of a prisoner in a work release  
9 program, the authority shall give written notice of the parole, release  
10 of a parolee from parole, or placement in a work release program to  
11 each victim.

12 (b) Upon the final unconditional release from a correctional  
13 facility of a prisoner who has not been paroled or earlier discharged,  
14 the Department of Corrections shall give written notice  
15 of the release to each victim.

16 (c) The authority or department, as the case may be, shall provide  
17 written notice to the victim at the address given on the request  
18 for notice or such other address as may be provided by the victim from  
19 time to time.

20 (d) Neither the failure of any territorial officer or employee  
21 to carry out the requirements of this section nor compliance with it  
22 shall subject the territory or the officer or employee to liability in  
23 any civil action. However, such failure may provide a basis for such  
24 disciplinary action as may be deemed appropriate by competent authority.

COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

TESTIMONY SIGN-UP SHEET

Public Hearing Date: March 30, 1979 Held at: Room 1100

HELD NO. 321 - AN ACT REQUIRING VICTIM NOTIFICATION TO OFFENDER RELEASE.

Fill in each appropriate space below.

WITNESS NAME	SIGNATURE	REPRESENTING:	TESTIMONY			IN FAVOR	AGAINST
			ORAL	WRITTEN	BOTH		
<u>L. Fitzgerald</u>	<u>[Signature]</u>	<u>AG</u>	<u>X</u>			<u>X</u>	
<u>William A. DeLoach</u>	<u>[Signature]</u>	<u>NOB</u>	<u>X</u>			<u>X</u>	
<u>Robert F. Kennedy</u>	<u>[Signature]</u>	<u>NOB</u>	<u>X</u>			<u>X</u>	
<u>Walter P. Reuther</u>	<u>[Signature]</u>	<u>UNION</u>	<u>X</u>			<u>X</u>	





Elizabeth Barrett-Anderson  
Attorney General

Office of the Attorney General  
Territory of Guam

Donald L. Paillette  
Chief Deputy Attorney General

Phone: (671) 472-68  
Telefax: (671) 472-  
Telex: (650) 697-

June 29, 1989

Senator Pilar C. Lujan  
Chairperson, Committee on  
Criminal Justice  
20th Guam Legislature  
Aqana, Guam 96910

Re: Bill No. 321 Victim Notification

Dear Senator:

I strongly support Bill 321, a law that would further the rights of victims of crime. It is important that the victim be kept fully informed of the process leading up to prosecution, time of sentencing, and as Bill 321 would provide, at anytime after sentencing with regard to release, suspension of sentence, or probation.

Bill 321 is the logical progression in our drive to improve the rights of victims of crime. I hope that the 20th Guam Legislature will act quickly in passing this bill as well as the Victim's Compensation bill previously heard by this Committee.

Sincerely,

  
ELIZABETH BARRETT-ANDERSON



JOSEPH F. ADA  
GOVERNOR  
FRANK F. BLAS  
LT. GOVERNOR

U.S. TERRITORY OF GUAM  
DEPARTMENT OF CORRECTIONS  
GOVERNMENT OF GUAM



RICARDO A. SAL  
DIRECTOR  
ANGEL A. R. SABI  
DEPUTY DIRECTOR

June 28, 1989

Honorable Senator Pilar Lujan  
Chairperson, Committee on Judiciary  
and Criminal Justice  
Twentieth Guam Legislature  
Agana, Guam 96910

Dear Senator Lujan:

Transmitted herewith is the Department of Corrections' testimony on Bill No. 321.

Sincerely,

  
ANGEL A. R. SABLAN  
Acting

Enclosure

OFFICE OF THE LEGISLATIVE SECRET	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>AD</u>
Time	<u>2:25 pm</u>
Date	<u>6/29/89</u> 20123

BILL 321: AN ACT REQUIRING VICTIM NOTIFICATION TO OFFENDER RELEASE

COMMENTS BY THE CHIEF PAROLE OFFICER FOR AND ON BEHALF OF THE DIRECTOR,  
DEPARTMENT OF CORRECTIONS; June 23, 1989

The Chief Parole Officer of the Parole Services Division, for and on behalf of the Director of Corrections, is grateful for the opportunity extended the Department to review and to render comments in this matter. Our comments on Bill 321 therefore follows:

A. The intent of Bill 321, that of notifying the crime victim whenever the prisoner as perpetrator is to be released or released from confinement is nothing new with the Department of Corrections.

Victimology, the study of issues related to victims, has always been a concern of the Parole Services Division, the Territorial Parole Board and the Department of Corrections.

In very brief general terms, the crime victim in parole work concerns us for reasons as follows:

1. The victim does play a role in the assessment of any danger the potential parolee may face when released;
2. The victim is more apt to understand, accept, and support the offender's release if consulted or notified prior to the offender's release;
3. The perpetrator is better prepared to deal with correctional programming, whether it be continued confinement or conditional release, if he is appropriately made knowledgeable of his victim's feelings and attitudes toward him. Offenders are better able to

live with themselves in a lawabiding setting, if they knew that their crime victims feel they have paid their due to society and have forgiven them. For offenders with genuine remorse, but where the crime victim insists that offender serves more incarceration, the victim's opposition can become an offender's motivation to work more toward proving ones worthiness for release; and

4. Parole work concerns itself with crime victims, or victim's next-of-kin, as a matter of compliance with Statutes and Executive Order.

Executive Order 88-26, promulgated on October 4, 1988, requires crime victims to be notified whenever a prisoner is to be released on parole or to be released full-time from the Department of Corrections. Other than full-term releases, which are handled by the Director and the Casework Division, all releases on parole are handled by the Parole Services Division for the Department of Corrections. Copies of Parole forms used in the notification process are attached for your information and file.

The feelings and attitudes of the victim or victim's next-of-kin are statutory concerns of the Parole Services Division, by virtue of Section 80.78(f) Title 9, Guam Code Annotated. The feelings and attitudes of victims as may be obtained by parole officers in their preparole investigation are documented and submitted to the Territorial Parole Board for consideration in the decision-making process of the Board.

B. Given our current practice of informing crime victim's we can, with some suggested amendments, support Bill 321. Our specific comments on this Bill, Section by Section, are as follows:

- 1. Section 1. Nothing objectionable; we support this Section.
- 2. Section 2(a) & 2(b); Nothing objectionable; we support these subsections.

3. Section 2(c); We suggest including in the definition of "Victim", "where the victim dies as a result of the offense, the deceased victim's next-of-kin," thus this subsection to read:

"Victim" means the person who was the victim of the offense against the person for which the prisoner or parolee was convicted, or, where the victim dies as a result of the offense, the deceased victim's next-of-kin, who has submitted a written request for notice of the parole or final unconditional release of the prisoner or parolee.

- 4. Section 3(a); Nothing objectionable; we support this Section.
- 5. Section 3(a) & 3(b); Nothing objectionable; we support these subsections.

6. Section 4(a) we suggest this subsection be amended to read;

Upon placing a prisoner on parole, upon the release of a parolee from parole, or upon the placement of a prisoner in a work release or study release program, the releasing authority, the Department of Corrections or the Territorial Parole Board, shall give written notice of the parole, release of a parolee from parole, or placement in a work release or study release program to each victim.

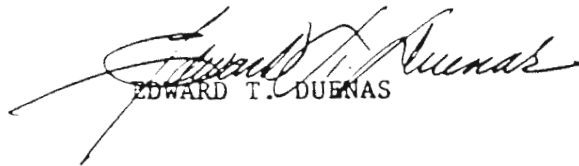
7. Section 4(b); Nothing objectionable; we support this subsection.

8. Section 4(c); We suggest this subsection be amended to read:

The Territorial Parole Board or Department of Corrections as the case may be, shall provide written notice to the victim at the address given on the request for notice or such other address as may be provided by the victim from time to time.

9. Section 4(d); Nothing objectionable; we support this subsection.

C. Si yo'os maase for the opportunity to render input in this matter.



EDWARD T. DUENAS



# PAROLE SERVICES DIVISION

## DEPARTMENT OF CORRECTIONS



P.O. BOX 3236  
Agana, Guam 96910  
Tel: No.: 734-2476/3980-9

IN THE MATTER OF THE POSSIBLE )  
PAROLE RELEASE OF )  
)  
)  
)  
\_\_\_\_\_ a Corrections inmate (

ADVISEMENT OF VICTIM  
OR VICTIM'S NEXT OF KIN

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In compliance with Executive Order No. 88-26, and in accordance with Parole policy, be advised as victim or victim's next of kin that the above-named inmate of the Guam Department of Corrections is eligible for parole on or after \_\_\_\_\_, and has applied for parole under the laws of Guam.

His application is tentatively set for hearing before the Territorial Parole Board on or after \_\_\_\_\_, or on a date the Board shall publicize in a local paper. The Board in said hearing may deny or grant inmate release on parole.

Your feelings or input in this matter would be appreciated. Such input may be expressed directly to an interviewing parole officer, submitted in writing to the Parole Division or Parole Board, or via a personal appearance in hearings before the Territorial Parole Board. Arrangements to appear before the Board may be made by calling telephone 734-2476 or directly with the Board on hearing date.

Dated;

EDWARD T. DUENAS  
Chief Parole Officer

### ACKNOWLEDGEMENT

I, Victim or Victim's Next of Kin, received the above advisement on date and time which appears after my name and signature herein:

\_\_\_\_\_  
NAME/SIGNATURE  
Date: \_\_\_\_\_/Time: \_\_\_\_\_

WITNESSED:



Superior Court of Guam  
 Judiciary Building  
 110 West O'Brien Drive  
 Agana, Guam 96910



Hon. Alberto C. Lamorena III  
 Presiding Judge

Telephone: (671) 472-8961/6  
 (671) 472-8956/8

July 3, 1989

Senator Pilar C. Lujan  
 Twentieth Guam Legislature  
 163 Chalan Santo Papa  
 Agana, Guam 96910

Dear Senator Lujan:

After having reviewed Bill Nos. 321 and 322 I am of the following opinions:

Concerning Bill 321, "An Act Requiring Victim Notification to Offender Release," I agree with the intention of the legislation, however, I recommend it be modified to consider the Superior Court of Guam's already existing procedure: Namely, an existing policy allowing victims to request for certain documents by contacting our Records Manager. Furthermore, I submit that upon receipt of the victim's request a certified copy of the Judgment will just as easily achieve the bill's purpose. Relative to additional notices, it appears administratively more efficient to require the Probation Office or the Attorney General's Office to handle these matters. Primarily because: (1) the Attorney General's Office initiates the case file with the court and is better informed to act as relations officer of such a release of information and (2) the Probation Office is responsible for maintaining all documents pertaining to probationers.

Concerning Bill 322, "An Act to Add New 6 G.C.A. §804.1 to Permit Video Taped and Closed Circuit TV Testimony in Lieu of in Court Testimony for Minors in Child or Sexual Abuse Proceedings," I consider this bill to be inadequately drafted as is and in jeopardy of violating Sections 5(e) and (g) of the Organic Act. More specifically, the Bill currently lacks sufficient procedures such as who will conduct the interview, who will be seen in the room, etc. Also, because the victim/witness may be interviewed privately, the defendant's right to cross-examination as well as his right to face his accuser is threatened. The defendant's right to due process of law will be violated without further revisions of this Bill. For your reference I have included a recent court decision to make you aware of the Constitutional issues involved.

If you have any further questions, please feel free to contact my office.

OFFICE OF THE LEGISLATIVE SECRETARY  
 ACKNOWLEDGMENT RECEIPT  
 Received By L  
 Time 10:30 Am  
 COPIED AT GOVERNMENT EXPENSE 91320

Sincerely,  
  
 ALBERTO C. LAMORENA III



## STATE v. WARFORD

Neb. 575

Cite as 289 N.W.2d 575 (Neb. 1986)

The \$9,000 transaction between Eagle Green and the Bank of Millard on May 16 was not a valid setoff, and any continuing right of setoff was lost due to the bank's improper response to the garnishment proceeding. The judgment against the Bank of Millard in the amount of \$6,074.47 plus interest and costs is affirmed.

AFFIRMED.



223 Neb. 368

STATE of Nebraska, Appellee,

v.

Floyd WARFORD, Appellant.

No. 85-580.

Supreme Court of Nebraska.

July 3, 1986.

Defendant was convicted in the District Court, Buffalo County, DeWayne Wolf, J., of first-degree sexual assault on child, and he appealed. The Supreme Court, Boslaugh, J., held that: (1) use of closed-circuit television to present testimony of State's primary witness against defendant, victim who was four and one-half years at time of acts complained of, denied defendant his rights under due process and confrontation clauses; (2) before closed-circuit television could be used to present examination of child victim in sexual assault case, showing had to be made of compelling need to protect child from further injury or that child was intimidated by presence of defendant during examination; and (3) where closed-circuit television was used to present examination of child victim in sexual assault case, camera had to be situated so as to permit view of all persons other than cameraman in room in which examination was conducted, defendant had to be able to communicate with his counsel at all times, court had to be able to be

interrupt questioning whenever necessary to permit counsel to make evidentiary objections and rulings as examination proceeded, and questioning of witness had to be done by persons who were authorized to participate in proceedings as members of bar.

Reversed and remanded for new trial.

## 1. Criminal Law ¶662.1

Both Federal and State Constitutions guarantee defendant right to confront or meet the witnesses against him face to face. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

## 2. Criminal Law ¶662.7

Implicit in defendant's right to confront witnesses is the right to cross-examine all witnesses. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

## 3. Constitutional Law ¶268(6)

## Criminal Law ¶662.1

Right of defendant to confront witnesses against him is basic to adversary system of criminal justice and is part of due process of law that is guaranteed by the Fourteenth Amendment. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

## 4. Criminal Law ¶662.1

Defendant's right of confrontation must occasionally give way to considerations of public policy and necessities of the case. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

## 5. Criminal Law ¶662.80

Defendant may waive his right of confrontation by disruptive conduct, by threatening or intimidating witness, or by stipulating to admission of evidence. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

## 6. Criminal Law ¶662.1

Limitation of defendant's right of confrontation can only be necessitated by showing of compelling interest, and any infringement must be as minimally obtrusive as possible. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

7. Constitutional Law ⇐268(6)

Criminal Law ⇐662.3

Use of closed-circuit television to present testimony of State's primary witness in prosecution for first-degree sexual assault on child denied defendant his rights under due process and confrontation clauses, where record did not show compelling need to protect child witness, who was four and one half at time of acts complained of, defendant was in courtroom while his attorney was in chambers where witness was testifying during both direct and cross-examination, court had no control over examination process due to lack of communication between courtroom and room in which witness was testifying, and camera which was used frequently failed to show complete view of witness and therapist who was permitted to conduct direct examination. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

8. Criminal Law ⇐667(1)

Before closed-circuit television may be used to present examination of child victim in sexual assault case, showing must be made of compelling need to protect child from further injury or that child is intimidated by presence of defendant during examination. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

9. Criminal Law ⇐667(1)

Where closed-circuit television is used to present examination of child victim in sexual assault case, camera must be situated so as to permit view of all persons other than cameraman in room in which examination is conducted, defendant must be able to communicate with his counsel at all times, and court must be able to interrupt questioning whenever necessary to permit counsel to make evidentiary objections and obtain rulings as examination proceeds. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

10. Criminal Law ⇐667(1)

If necessary, support person such as parent or therapist may be permitted to be in room with witness while closed-circuit examination is conducted.

but questioning of witness must be done by persons who are authorized to participate in proceeding as members of the bar. Neb. Rev.St. § 7-101.

11. Criminal Law ⇐667(1)

It is important that trial court, prior to using closed-circuit television for examination of witness, prescribe for parties mechanical requirements or conditions of procedure, including such things as how many cameras and microphones will be used, who will operate them, where they will be placed, what part of examining room will be shown, and where counsel will be seated, so as to allow both parties opportunity to object to proceeding prior to its implementation. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

12. Criminal Law ⇐667(1)

It is desirable to inform jury of nature of closed-circuit telecast of witness examination prior to allowing presentation, so that jury will not afford the examination any greater weight than other testimony. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

13. Witnesses ⇐79(2)

Defendant must be given notice and opportunity to attend and participate by counsel in proceeding to determine competency of child victim to testify in sexual assault case. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

14. Criminal Law ⇐1086.11

Record of proceeding to determine competency of child victim to testify in sexual assault case must be made and preserved. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11.

*Syllabus by the Court*

1. Constitutional Law: Criminal Law: Witnesses. Both the federal and the state Constitutions guarantee a defendant the right to confront or meet the witnesses against him face to face.

2. Constitutional Law: Criminal Law: Witnesses. Implicit in confrontation is the right to cross-examine all witnesses.

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3. Constitutional Law: Criminal Law: Witnesses. The fundamental right to confront and cross-examine witnesses is primarily a functional right which promotes reliability in criminal trials.

4. Constitutional Law: Criminal Law: Witnesses: Public Policy. The right of confrontation must occasionally give way to considerations of public policy and the necessities of the case.

5. Constitutional Law: Criminal Law: Witnesses: Waiver. A defendant may waive his right of confrontation by disruptive conduct, by threatening or intimidating the witness, or by stipulating to the admission of certain evidence.

6. Constitutional Law: Criminal Law: Witnesses. A limitation of the right of confrontation can only be necessitated by a showing of a compelling interest and any infringement must be as minimally obtrusive as possible.

7. Constitutional Law: Criminal Law: Telecommunications: Witnesses: Minors: Sexual Assault. Before closed-circuit television may be used to present the examination of a child victim in a sexual assault case, a showing must be made of a compelling need to protect the child from further injury or that the child is intimidated by the presence of the defendant during the examination.

8. Constitutional Law: Criminal Law: Telecommunications: Witnesses: Minors: Sexual Assault. Where closed-circuit television is used to present the examination of a child victim in a sexual assault case, the camera must be situated so as to permit a view of all persons (other than the cameraman) in the room where the examination is conducted; the defendant must be able to communicate with his counsel at all times; and the court must be able to interrupt the questioning whenever necessary to permit counsel to make evidentiary objections and obtain rulings as the examination proceeds.

9. Constitutional Law: Criminal Law: Telecommunications: Witnesses: Attorneys at Law. If necessary, a support person, such as a parent or therapist, may

be permitted to be present in the room with the witness while a closed-circuit television examination is being conducted, but the questioning of the witness must be done by persons who are authorized to participate in the proceeding as members of the bar.

10. Constitutional Law: Criminal Law: Pretrial Procedure: Notice: Witnesses: Minors: Sexual Assault: Records. A defendant must be given notice and an opportunity to attend and participate by counsel in a proceeding to determine the competency of a child victim to testify in a sexual assault case. A record of such a proceeding must be made and preserved.

Gary L. Hogg, Buffalo County Public Defender, for appellant.

Robert M. Spire, Atty. Gen., and Jill Gradwohl, Lincoln, for appellee.

Richard E. Shugrue, Omaha, for amicus curiae Nebraska Criminal Defense Attys. Ass'n.

BOSLAUGH, WHITE, HASTINGS, CAPORALE, SHANAHAN, and GRANT, JJ.

BOSLAUGH, Justice.

The defendant, Floyd Warford, was convicted of first degree sexual assault on a child, a felony under Neb.Rev.Stat. § 28-319 (Reissue 1985), and sentenced to the Nebraska Penal and Correctional Complex for a term of not less than 2 nor more than 5 years. The acts complained of were alleged to have occurred on or about July 5, 1983, when the victim was 4 1/2 years old and the defendant was 43.

The case began with an anonymous telephone call on August 9, 1984, to a Child Protective Services worker for the state Department of Social Services. The worker, Jill Stump, testified that the caller expressed concern over the behavior of the victim. The caller informed Stump that the child was demonstrating sexual play with dolls, was kissing boys, and was asking them to have sexual intercourse with her. On August 31, 1984, Stump received a second call from a different person again ex-

pressing concern over similar incidents of inappropriate behavior exhibited by the child.

The child's mother was contacted and the child was brought in for an interview. At the interview the child was given four anatomically correct dolls, which the child named with the names of her mother, the defendant, her brother, and herself. The child then began playing with the dolls in a sexual manner, with the doll identified as the defendant sexually abusing the doll identified as the child, while the child's mother was at bingo. The child's mother stated that from October 1980 to July 22, 1983, she and her children were living with the defendant in a white house. She further stated that during 1983 she went out to play bingo every Wednesday and Friday night while the defendant stayed with the children.

Prior to the trial, the defendant filed a motion objecting to the competency of the victim to testify because of her age and moving that the victim not be allowed to testify. The trial court then conducted an examination of the child to determine whether she was competent to testify. The only persons present were the judge, the child, a social worker, and the court reporter. The record does not show whether counsel for the defendant or the prosecuting attorney was notified of the interview. The trial court determined that the victim was competent to testify as a witness, that she understood the nature of the proceedings, that she would be truthful in her statements and answers, and therefore was competent to testify.

At trial the child was called to the stand and began answering 171 questions asked by the prosecuting attorney. The child responded to some preliminary questions, and when asked whether anybody touched her in a bad way while she was living in the white house, she replied, "Yes," naming the defendant as the perpetrator. The child was then given four anatomically correct dolls to allow her to demonstrate what

had occurred. The prosecuting attorney had had had opened, but it is clear from the record that the child became uncooperative and refused to answer any further questions. The prosecuting attorney then asked if she could show him what happened if all the people were not there, to which the child replied, "Yes." Thereupon, outside the presence of the jury, the prosecuting attorney moved to examine and cross-examine the witness in a separate room, to record the examination on videotape, and to allow the defendant and the jury to watch the examination in the courtroom on a closed-circuit television monitor. The prosecuting attorney stated that the motion was made because of the inability of the victim to testify before the jury. The State also requested that the child's therapist, Joanna Hochfelder, be allowed in the examining room for support.

Defense counsel objected on the grounds that the procedure would violate the defendant's constitutional rights by denying him the right to hear, see, and otherwise confront the witness. Defense counsel further objected because the filming would be set up and operated by the State, thereby allowing the State to bear on what was reflected. The court overruled all objections, stating that "under the circumstances, the case and the age of the victim, that it probably is appropriate under the circumstances." The court also stated that it would "accommodate the needs of the defendant as far as questioning by permitting during a recess after the direct, attorney for the defendant to confer with his client prior to cross-examination."

After the jury returned, the court and counsel for the parties joined the child and her therapist in chambers to resume direct examination of the child. The jury and the defendant viewed the proceedings on video equipment set up in the courtroom. The defendant did not have any means of communication with his attorney during this part of the proceedings, nor could the 172 judge monitor what was happening in the courtroom.

The prosecuting attorney attempted to have the child demonstrate with a

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the dolls what had happened between her and the defendant. The child was again uncooperative. The State then asked permission for the therapist to question the child. Defense counsel objected to the examination being conducted by someone who was not an attorney and who was an officer of the State, but the trial court allowed the therapist to conduct the examination of the victim.

After an extensive series of leading questions by the therapist with little result, the trial court ordered a recess. Following the recess, the State moved to allow the child to be interviewed in chambers by her therapist, with all other parties situated in the courtroom and watching the examination on television monitors. Defense counsel again objected to the procedure on constitutional grounds and entered a continuing objection to all leading questions. The trial court noted the continuing objection but granted the State's motion, so that the child continued her testimony in chambers with only the therapist present. All other persons involved in the trial were in the courtroom and watched the interview on television monitors. When the therapist concluded her direct examination, defense counsel was allowed in chambers to cross-examine the witness. The prosecuting attorney conducted the redirect examination. At no time did the judge have any means by which he could exercise control over the examination of the witness or interrupt the questioning to rule on objections made by the defendant.

On appeal the defendant contends that his constitutional rights under the due process clause and the confrontation clause were violated by the manner in which the child was allowed to testify. Specifically, the defendant argues that (1) the State failed to show any need for the innovative means used in questioning the child, e.g., that the defendant was disruptive or uncontrollable or would intimidate the witness, and that (2) the trial court and the defendant were not physically present in the room in which the witness was testifying, and there were no means by which the defendant could interject an objection or prevent

the unlimited leading questions propounded by the therapist.

The defendant also contends that the trial court erred in failing to sustain the defendant's objection to the competency of the child as a witness. The defendant has raised an issue of first impression in this state as to whether and to what extent a trial court may constitutionally limit confrontation in order to accommodate the needs and emotional fragility of a child sexual assault victim.

This court would be remiss to close its eyes to the ever increasing problems associated with child victimization and the child's role in prosecuting the perpetrators of such crimes. These child victims are especially accessible to abusers, who often times are members of the child's family or otherwise acquaintances of the child's. One survey suggests that of 583 cases of child sexual abuse only 8 percent involved a stranger to the child. See Note, *The Testimony of Child Victims in Sex Abuse Prosecutions: Two Legislative Innovations*, 98 Harv.L.Rev. 806, 807 n. 14 (1985). This leads to a low percentage of actual assaults that are even brought to the attention of authorities. Of those cases that are reported, even fewer lead to criminal prosecutions and the conviction rate is strikingly low. See D. Whitcomb, E. Shapiro & L. Stellwagen, *When the Victim is a Child: Issues for Judges and Prosecutors* 4 (Nat. Inst. of Just. 1985). Many cases involve a decision by the prosecutor not to prosecute because there is little physical evidence and the only witness is the child, who may, by the standards of our adult legal system, be perceived to be incompetent, unreliable, or otherwise not credible as a witness. See *When the Victim is a Child*, *supra* at 6. Even those children who appear to be competent often cannot, will not, or are not allowed to participate in the proceedings involved in a criminal trial due to the very real psychological harm that results from forcing the child to repeat the terrifying experience again and again, often in front of a large group of people, including the defendant. See, *When the Victim is a*

...*supra* at 13-20; MacFarland, *Diagnostic Evaluations and the Use of Videotapes in Child Sexual Abuse Cases*, 40 U.Miami L.Rev. 135 (1985). Children are reluctant witnesses who are especially susceptible to suggestion and easily confused by questions couched in adult language. See, Berliner, *The Child Witness: The Progress and Emerging Limitations*, 40 U.Miami L.Rev. 167 (1985); Goodman, *Child Sexual Assault: Children's Memory and the Law*, 40 U.Miami L.Rev. 181 (1985). Child sexual abuse cases have awakened a need to protect the victims, not only from the actual attack but also from the emotional trauma of testifying about the experience in later legal proceedings. See Mlyniec, *See No Evil? Can Insulation of Child Sexual Abuse Victims be Accomplished Without Endangering the Defendant's Constitutional Rights?*, 40 U.Miami L.Rev. 115 (1985).

The need to adopt measures to ease the emotional burden placed on a child witness cannot, however, be an excuse for stripping the defendant of his constitutional rights. While new procedures can and must be implemented in our courts, such procedures can be valid only to the extent that they truly protect the child witness and at the same time do not infringe upon the defendant's right to confront his accusers.

[1-3] Both the federal and the state Constitutions guarantee a defendant the right to confront or meet the witnesses against him face to face. U.S. Const. amend. VI and XIV; Neb. Const. art. I, § 11. Implicit in confrontation is the right to cross-examine all witnesses. *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). This right is basic to our adversary system of criminal justice and is part of due process of law that is guaranteed by the 14th amendment. *Farretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975); *State v. Thaden*, 210 Neb. 622, 316 N.W.2d 317 (1982).

This fundamental right to confront and cross-examine witnesses is primarily a functional right which promotes reliability in criminal trials. See *Lee v. Illinois*, —

U.S. —, 106 S.Ct. 2056, 90 L.E. (1986). The absence of proper confrontation calls into question the ultimate reliability of the factfinding process. *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980).

Recently, the Supreme Court has that confrontation

"(1) insures that the witness will make his statements under oath—thus pressing him with the seriousness of the matter and guarding against the likelihood of the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the 'greatest legal engine ever invented for the discovery of truth'; (3) permits the jury that is to decide the defendant's fate to observe the demeanor of the witness making his statement, thus aiding the jury in assessing his credibility." (footnote omitted)

*Lee v. Illinois*, *supra* at 106 S.Ct. at 2062 (citing *California v. Green*, 399 U.S. 147, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970)).

[4-6] The right of confrontation is not, however, immune to exception. As early as 1895, the U.S. Supreme Court held that the right of confrontation must occasionally give way to considerations of public policy and the necessities of the case. *Mattos v. United States*, 156 U.S. 237, 15 S.Ct. 337, 39 L.Ed. 409 (1895). Case law suggests that the right is subject to some hearsay exceptions. *United States v. Iron Shell*, 633 F.2d 77 (8th Cir.1980), cert. denied 450 U.S. 1001, 101 S.Ct. 1709, 68 L.Ed.2d 203 (1981); *United States v. Nick*, 604 F.2d 1199 (9th Cir.1979). A defendant may waive his right of confrontation by disruptive conduct, *Illinois v. Allen*, 397 U.S. 937, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970), reh'g denied 398 U.S. 915, 90 S.Ct. 1684, 26 L.Ed.2d 80; by threatening or intimidating the witness, *United States v. Balano*, 618 F.2d 624 (10th Cir.1979), cert. denied 449 U.S. 840, 101 S.Ct. 118, 66 L.Ed.2d 47 (1980), and *United States v. Carlson*, 547 F.2d 1346 (8th Cir.1976), cert. denied 431 U.S. 914, 97 S.Ct. 2174, 53 L.Ed.2d 224 (1977); or by stipulating to the admission of certain evidence, *Williams v.*

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*Oklahoma*, 358 U.S. 576, 79 S.Ct. 421, 3 L.Ed.2d 516 (1959). A defendant who pleads guilty also waives his right of confrontation. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Although the present case does not fall squarely within any of the already established exceptions to confrontation, at the very least the cases suggest that a limitation of the right can only be necessitated by a showing of a compelling interest and any infringement must be as minimally obtrusive as possible.

[7] The use of closed-circuit television to present the testimony of the State's primary witness against the defendant in a child sexual assault case brings all of the public policy concerns behind protecting child victims into play with the defendant's right to confront his accusers. Courts which allow such evidentiary innovations must tailor these techniques carefully to prevent overbroad application. After reviewing the procedure by which closed-circuit television was used in the present case, we conclude that the trial court did not require the State to stay within minimal constitutional guidelines and, hence, denied the defendant his rights under the due process and confrontation clauses.

The Eighth Circuit Court of Appeals, in refusing to uphold the admission into evidence of a prerecorded video deposition during which the defendant was not present, did not foreclose any possible exception to face-to-face confrontation. *United States v. Benfield*, 593 F.2d 815 (8th Cir.1979). What the court did find was that "what curtailment or diminishment might be constitutionally permissible depends on the factual context of each case.... Any exception should be narrow in scope and based on necessity or waiver." *Benfield, supra* at 821. The court indicated that there must be a showing of extraordinary circumstances necessitating reliance on any new procedure which implicates confrontation. *Benfield, supra*

In *Hochheiser v. Superior Court (People)*, 161 Cal.App.3d 777, 208 Cal.Rptr. 273 (1984), a California Court of Appeal re-

fused to allow the use of closed-circuit television in the prosecution of a defendant for lewd conduct with a minor. The witnesses-victims were two boys, ages 9 and 10, and the court stated that a generalized belief in psychological harm was insufficient to show the need for altering normal trial procedures. *Hochheiser, supra*. Although the court decided the case on the basis that it had no legislative authority to allow the use of the television monitors, it also indicated that before an evidentiary innovation is employed to prevent additional injury to a child victim, the prosecution must present a factual basis supporting the nature of the potential injury to the witness, its degree, and its potential duration. *Hochheiser, supra*. "[E]xtreme care must be taken to strike the correct balance between the policies protecting the mental health of the child victim and the right of the accused to a fair trial." *Hochheiser, supra* at 793, 208 Cal.Rptr. at 283.

[8] The record before us does not show a compelling need to protect the child witness from further injury. The record does show that the attempt to examine the child in open court was frustrated by the child's failure to cooperate. There should also be a particularized showing on the record that the child would be further traumatized or was intimidated by testifying in the courtroom in front of the defendant. Without such a showing the use of closed-circuit television will not withstand constitutional scrutiny.

[9] Once the State has made an adequate showing on the record, the use of a new evidentiary tool such as closed-circuit television must be as minimally intrusive as possible. See *State v. Sheppard*, 197 N.J. Super. 411, 484 A.2d 1330 (1984). At the very least, the defendant must at all times have a means of communicating with his attorney, and the court must be able to control the examination by interrupting the questioning to rule on objections. See *Sheppard, supra*

Initially, and again during cross-examination, the defendant in this case was in the



# Twentieth Guam Legislature

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Agaña, Guam 96910

## Committee on Judiciary and Criminal Justice

VOTE SHEET ON: SUBSTITUTE BILL NO. 321

COMMITTEE MEMBER	TO PASS	NOT TO PASS	TO REPORT OUT ONLY	TO PLACE IN INACTIVE FILE
<u><i>Walter C. Lujan</i></u> Senator Walter C. Lujan Chairman	✓			
<u><i>Francisco R. Santos</i></u> Senator Francisco R. Santos Vice Chairman	✓			
<u><i>Elizabeth P. Arriola</i></u> Senator Elizabeth P. Arriola				
<u><i>Madeline Z. Borrallo</i></u> Senator Madeline Z. Borrallo	✓			
<u><i>Herrania D. Berking</i></u> Senator Herrania D. Berking	✓			
<u><i>Gordon M. Milloux</i></u> Senator Gordon M. Milloux				
<u><i>Terrell E. Nelson</i></u> Senator Terrell E. Nelson				
<u><i>Edward D. Reyes</i></u> Senator Edward D. Reyes	✓			
<u><i>Jose L. Ap</i></u> Speaker Jose L. San Agustin	✓			
<u><i>Edward R. Duenas</i></u> Senator Edward R. Duenas	✓			
<u><i>Martha C. Ritta</i></u> Senator Martha C. Ritta				
<u><i>Antonio R. Unpingco</i></u> Senator Antonio R. Unpingco				

2/27/90



courtroom while his attorney was in chambers where the witness was testifying. The defendant could not physically confront his accuser, nor could he confront the witness through counsel because he had no means of communicating with his attorney. Even when the attorneys and the judge returned to the courtroom, the defendant did not have a meaningful opportunity to confront the witness because the court had no control over the examination process. This lack of communication between the courtroom and the room in which the witness was testifying unduly inhibited the defendant's confrontation right and was therefore constitutionally objectionable.

The camera which was used at the trial to record the examination of the witness frequently failed to show a complete view of the witness and the examiner. The camera should be so situated that persons viewing the examination in the courtroom will be able to see the witness, the examiner, and any other person (other than the cameraman) present in the room where the examination is being conducted.

[10] Although it is proper where necessary to allow a support person, such as a parent or therapist, to be in the room with the witness while the examination is being conducted, the actual questioning of the witness must be done by persons who are authorized to participate in the proceeding as members of the bar.

Only a person who has been admitted to the practice of law may participate in a trial by the examination of witnesses unless he appears in his own behalf. Neb. Rev.Stat. § 7-101 (Reissue 1983). The examination of a witness must be conducted within the restrictions imposed by the rules of evidence and trial procedure, and this is especially true in a criminal prosecution. A prosecutor must be an impartial officer, and private prosecutors are not permitted under our law. *McKay v. State*, 90 Neb. 63, 132 N.W. 741 (1911); *Rogers v. State*, 97 Neb. 180, 149 N.W. 318 (1914).

[11, 12] While it is impossible and inappropriate to detail in detail

the most acceptable manner of arranging the video and communication equipment for all cases, it is important that the trial court, prior to using such a technique, prescribe for the parties the mechanical requirements or conditions of the procedure, e.g., how many cameras and microphones will be used, who will operate them, where they will be placed, what part of the examining room will be shown, and where counsel will be seated. This will allow both parties the opportunity to object to the proceeding prior to its implementation. See *State v. Sheppard*, 197 N.J. Super. 411, 484 A.2d 1330 (1984). It is desirable to inform the jury of the nature of the closed-circuit telecast prior to allowing the presentation, so the jury will not afford the examination any greater weight than other testimony. See *Sheppard, supra*.

[13, 14] Although not specifically assigned as error, since the cause must be remanded for a new trial, it is appropriate to comment upon the procedure which should be followed in determining the competency of a child to testify in the proceeding. The defendant must be given notice and an opportunity to attend and participate by counsel in any proceeding in which the issue of the competency of the victim to testify is determined. A record of the proceeding must be made so that it will be available for review if necessary. The record in the present case is unclear as to whether the defendant waived his right to attend and participate in the pretrial proceeding, which was conducted without him or his counsel present.

For the reasons stated the judgment is reversed and the cause remanded for a new trial.

REVERSED AND REMANDED FOR A NEW TRIAL

KRIVOSHA, C.J., participating on brief



EXPENSE