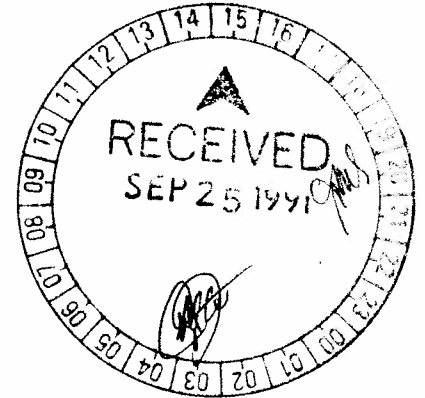




Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
DISENAN IMAKALAH
AGANA, GUAM 96910-1533

SEP 19 1991



The Honorable Joe T. San Agustin
Speaker, Twenty-first Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 282, which I have signed into law this date as Public Law 21-45.

I am pleased that the Legislature is addressing this most heinous problem, the problem of driving while under the influence. DWI's account for too much misery and destruction to be treated with anything less than the utmost seriousness, and I gladly sign this measure into law.

However, our Guam Police Department has some difficulty with the section of this bill dealing with the impounding of vehicles. The GPD has concerns that this language will cause enforcement problems. We will transmit these specific concerns and corrective language at a date in the very near future.

Sincerely

FRANK F. BLAS
Governor of Guam
Acting



Commonwealth Now!

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 282 (COR), "AN ACT TO REPEAL AND REENACT §23405 OF TITLE XXIV OF THE GOVERNMENT CODE AND TO ADD §23405.2 TO SAID TITLE, RELATIVE TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, AND MAKING AN APPROPRIATION THEREFOR," was on the 30th day of August, 1991, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:




PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 10th day of September,
1991, at 4:45 o'clock P.m.



Theresa G. Duenas
Assistant Staff Officer
Governor's Office

APPROVED:



FRANK F. BLAS
Governor of Guam
Acting

Date: SEP 19 1991

Public Law No: 21-45

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Bill No. 282 (COR)
As substituted by the Committee
on Judiciary and Criminal Justice

Introduced by:

F. R. Santos
P. C. Lujan
M. D. A. Manibusan
J. G. Bamba
A. C. Blaz
M. C. Ruth
G. Mailloux
J. P. Aguon
E. P. Arriola
M. Z. Bordallo
D. F. Brooks
H. D. Dierking
E. R. Duenas
E. M. Espaldon
C. T. C. Gutierrez
D. Parkinson
M. J. Reidy
J. T. San Agustin
D. L. G. Shimizu
A. R. Unpingco

AN ACT TO REPEAL AND REENACT §23405 OF TITLE XXIV OF THE GOVERNMENT CODE AND TO ADD §23405.2 TO SAID TITLE, RELATIVE TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, AND MAKING AN APPROPRIATION THEREFOR.

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

2 **Section 1.** §23405 of Title XXIV of the Government Code is hereby

1 repealed and reenacted to read:

2 **"§23405. Driving while under the influence of alcohol or**
3 **drugs.**

4 (a) It is unlawful for any person who is under the influence
5 of alcohol or any drug or under the combined influence of alcohol
6 and any drug, to drive or be in actual or physical control of any
7 vehicle. For the purposes of this section "drug" means a
8 controlled substance other than a drug prescribed by a licensed
9 physician.

10 (b) It is unlawful for any person who has one tenth of one
11 percent (.10%), or more, by weight, of alcohol in his blood, to drive
12 or be in actual or physical control of any vehicle.

13 (c) A person convicted of violating any provision of this
14 section shall be guilty of a misdemeanor, and upon conviction
15 shall have his privilege to operate a motor vehicle suspended by
16 the Court for a period of not less than ninety (90) days nor more
17 than six (6) months and/or have the vehicle in which the offense
18 was committed impounded by the Guam Police Department or its
19 authorized agent at such locations as shall be designated by the
20 Chief of Police, for the same period of time as the privilege to
21 operate a motor vehicle is suspended. The towing and
22 impoundment of vehicles pursuant to the provisions of this section
23 shall be at the expense of the person charged with the violation, in
24 addition to any fine or restitution imposed and ordered by the
25 Court. A person convicted of violating the provisions of this
26 section shall be sentenced to a minimum of forty-eight (48) hours

1 imprisonment in the custody of the Department of Corrections or
2 the Guam Police Department; **provided, however,** that the Court
3 may waive the mandatory minimum jail sentence for a first time
4 offender and impose other alternative sentencing. In addition to
5 any other sentence imposed, the Court shall impose a mandatory
6 fine of not less than One Thousand Dollars (\$1,000) upon all
7 offenders and shall require restitution be made to persons injured
8 or for property damaged.

9 (d) Any person convicted of a first offense under this section
10 shall have his privilege to drive suspended for the minimum
11 mandatory period established herein but the Court may permit
12 the person a limited privilege to drive if driving is required for
13 that person to maintain his livelihood. Any person convicted of a
14 second violation of this section shall have his privilege to drive
15 suspended for at least six (6) months and no limited privilege to
16 operate a motor vehicle shall be given.

17 (e) Any person convicted of violating any provisions of this
18 section for a third time, or more, shall forfeit the vehicle in which
19 the third offense, or more, was committed. The forfeiture and
20 seizure of the vehicle shall be enforced by the Guam Police
21 Department and the vehicle shall be disposed of in accordance
22 with those provisions of law relating to assets forfeiture.

23 In the case where a vehicle is owned by a person other than
24 the one convicted of three (3) or more violations of this section
25 and the owner had no knowledge that the vehicle would be driven
26 by an intoxicated person, the Court, instead of ordering the

1 forfeiture of the vehicle, may suspend the convicted person's
2 driver's license for a period of a minimum of one (1) year and a
3 maximum of five (5) years and no limited privilege to operate a
4 motor vehicle shall be granted.

5 (f) It is unlawful for any person, while under the influence
6 of alcohol or any drug or under the combined influence of alcohol
7 and any drug, to drive or be in actual or physical control of any
8 vehicle and, when so driving or controlling, do any act forbidden
9 by law or neglect any duty imposed by law, in the driving or
10 control of the vehicle, which act or neglect proximately causes
11 bodily injury to any person other than the driver.

12 (g) It is unlawful for any person, while having one tenth of
13 one percent (.10%) or more, by weight, of alcohol, in his blood, to
14 drive or be in physical control of a vehicle and, when so driving,
15 do any act forbidden by law or neglect any duty imposed by law in
16 the driving or control of the vehicle, which act or neglect
17 proximately causes bodily injury to any person other than the
18 driver.

19 In proving the person neglected any duty imposed by law in
20 the driving or control of the vehicle, it is not necessary to prove
21 that any specific section of the Guam Code Annotated was
22 violated.

23 (h) A person convicted of violating subsections (f) or (g) of
24 this section shall be guilty of a felony of the third degree.

25 (i) The fact that any person charged with violating any of
26 the provisions of this section is or has been legally entitled to use

1 alcohol or any drug shall not constitute a defense against any
2 charge of violating the provisions of this section.

3 (j) Upon the trial of any criminal action, or preliminary
4 proceeding in a criminal action, arising out of acts alleged to have
5 been committed by any person (while driving or being in control of
6 a vehicle while under the influence of alcohol or any drug, or
7 both), the amount of alcohol in the person's blood at the time a
8 test is taken subsequent to the driving, as shown by an analysis of
9 that person's breath, blood, or urine, shall give rise to the
10 following presumptions affecting the burden of proof:

11 (1) If there was at that time less than one twentieth of
12 one percent (.05%) by weight of alcohol in the person's
13 blood, it shall be presumed that the person was not under
14 the influence of alcohol at the time of the alleged offense.

15 (2) If there was at that time one twentieth of one
16 percent (.05%) or more but less than one tenth of one percent
17 (.10%) by weight of alcohol in the person's blood, that fact
18 shall not give rise to any presumption that the person was
19 or was not under the influence of alcohol, but the fact may
20 be considered with other competent evidence in determining
21 whether the person was under the influence of alcohol at the
22 time of the alleged offense.

23 (3) If there was at that time one tenth of one percent
24 (.10%) or more by weight of alcohol in the person's blood, it
25 shall be presumed that the person was under the influence of
26 alcohol at the time of the alleged offense.

1 (4) Percent by weight of alcohol in the blood shall be
2 based upon grams of alcohol per one hundred (100)
3 milliliters of blood.

4 (5) Before such presumptions are made, the
5 prosecuting attorney must show the following:

6 (i) That the machine used for the test was
7 properly checked and in proper working order at the
8 time of conducting the test;

9 (ii) That the chemicals employed in the test were
10 of the correct kind and compounded in the proper
11 proportions;

12 (iii) That the person had nothing in his mouth at
13 the time of the test and that he had taken no food or
14 drink within fifteen (15) minutes prior to taking the
15 test;

16 (iv) That the test be given by a qualified
17 operator and in the proper manner.

18 The provisions of this subsection shall not be construed
19 as limiting the introduction of any other competent evidence
20 bearing upon the question whether the person ingested any
21 alcohol or was under the influence of alcohol at the time of
22 the alleged offense."

23 **Section 2. Counseling on conviction.** Whenever the court penalizes a
24 person under this Chapter, it shall also require that the person be referred to
25 a qualified substance abuse counselor at the Department of Mental Health
26 and Substance Abuse for an assessment of the person's alcohol dependence

1 and need for treatment. The counselor shall submit a report with
2 recommendations to the Court, which may require the person to obtain
3 appropriate treatment. All costs for such assessment or treatment or both
4 shall be borne by the penalized person except for one documented to be
5 indigent.

6 **Section 3.** §23405.2 is added to Title XXIV of the Government Code to
7 read:

8 **"§23405.2. Records.** The Guam Police Department in
9 cooperation with the Traffic Division of the Superior Court of
10 Guam shall establish a record and data base information system
11 for all traffic violations, which information shall be made
12 available to insurance companies upon request. The Guam Police
13 Department and the Traffic Division shall insure timely
14 compliance with such requests."

15 **Section 4. Appropriations.** There is hereby appropriated from the
16 General Fund to the Guam Police Department Twenty Thousand Dollars
17 (\$20,000) to purchase field sobriety kits to be carried in police patrol vehicles
18 for field sobriety tests for drivers suspected of driving while under the
19 influence of alcohol.

20 **Section 5.** Ten Thousand Dollars (\$10,000) are hereby appropriated
21 from the General Fund to the Guam Police Department to fund an
22 educational campaign to publicize the severe penalties imposed by this Act.

23 **Section 6. Severability.** If any of the provisions of this Act or the
24 application thereof to any person or circumstance are held invalid, such
25 invalidity shall not affect any other provision or application of this Act which
26 can be given effect without the invalid provision or application, and to this

1 end the provisions of this Act are severable.

6

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Date: 8/30/91

VOTING SHEET

Bill No. 282

Resolution No. _____

Question: _____

	AYE	NO	NOT VOTING	ABSENT/ OUT DURING ROLL CALL
<u>AGUON, John P.</u>	✓			
<u>ARRIOLA, Elizabeth P.</u>	✓			
<u>BAMBA, J. George</u>	✓			
<u>BLAZ, Anthony C.</u>	✓			
<u>BORDALLO, Madeleine Z.</u>	✓			
<u>BROOKS, Doris F.</u>	✓			
<u>DIERKING, Herminia D.</u>	✓			
<u>DUENAS, Edward R.</u> +	✓			
<u>ESPALDON, Ernesto M.</u>	✓			
<u>GUTIERREZ, Carl T.C.</u>	✓			
<u>LUJAN, Pilar C.</u>	✓			
<u>MAILLOUX, Gordon</u>	✓			
<u>MANIBUSAN, Marilyn D.A.</u>	✓			
<u>PARKINSON, Don</u>	✓			
<u>REIDY, Michael J.</u>	✓			
<u>RUTH, Martha C.</u>	✓			
<u>SAN AGUSTIN, Joe T.</u>	✓			
<u>SANTOS, Francisco R.</u>	✓			
<u>SHIMIZU, David L.G.</u>	✓			
<u>TANAKA, Thomas V.C.</u> +	✓			
<u>UNPINGCO, Antonio R.</u> +	✓			