



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
FENSIAN IMAOGA LAHE
AGANA, GUAM 96910 U.S.A.


MAR 30 1992

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

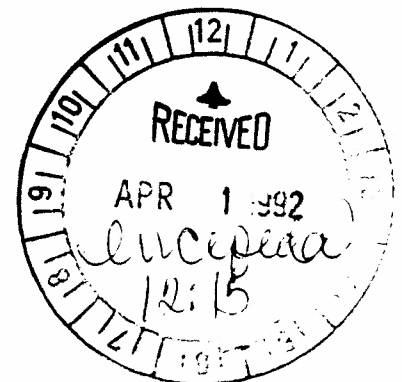
Dear Mr. Speaker:

Transmitted herewith is Bill No. 784, which I have signed into law
this date as Public Law 21-96.

Sincerely yours,


JOSEPH F. ADA
Governor
210727

Attachment

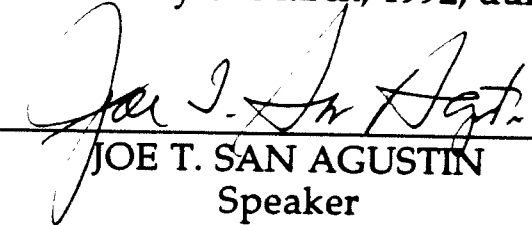


Commonwealth Now!

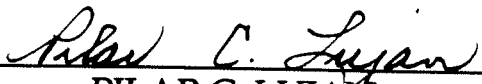
TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

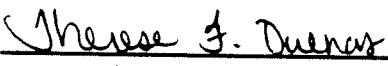
This is to certify that Bill No. 784 (COR), "AN ACT TO ADD A NEW CHAPTER 160 TO TITLE 8, GUAM CODE ANNOTATED, TO ESTABLISH A BILL OF RIGHTS FOR VICTIMS OF CRIMES AND TO AMEND SUBSECTION (a) OF §8, PUBLIC LAW 21-52, ON A NEW ADULT CORRECTIONAL FACILITY," was on the 13th day of March, 1992, duly and regularly passed.


JOE T. SAN AGUSTIN
Speaker

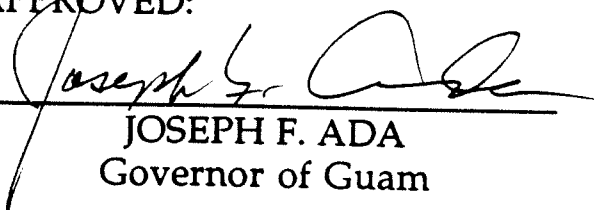
Attested:


PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 19th day of MARCH, 1992,
at 11:15 o'clock A.M.


Assistant Staff Officer
Governor's Office

APPROVED:


JOSEPH F. ADA
Governor of Guam

Date: 3/30/92

Public Law No. 21-96

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

Bill No. 784 (COR)

Introduced by:

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

AN ACT TO ADD A NEW CHAPTER 160 TO TITLE 8, GUAM
CODE ANNOTATED, TO ESTABLISH A BILL OF RIGHTS FOR
VICTIMS OF CRIMES AND TO AMEND SUBSECTION (a) OF
§8, PUBLIC LAW 21-52, ON A NEW ADULT CORRECTIONAL
FACILITY.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**
2 **Section 1.** Chapter 160 is hereby added to Title 8, Guam Code
3 Annotated, to read:

1 "§160.10. Short title. This Chapter shall be known as the
2 Bill of Rights for victims and witnesses of crimes.

3 §160.20. Legislative intent. In recognition of the civic and
4 moral duty of victims and witnesses of crimes to cooperate fully
5 and voluntarily with law enforcement and prosecutorial agencies,
6 and in further recognition of the continuing importance of such
7 citizen cooperation in territorial law enforcement efforts and in
8 the general effectiveness and well-being of the criminal justice
9 system of the territory, the Legislature declares its intent in this
10 Chapter to ensure that all victims and witnesses of crime are
11 treated with dignity, respect, courtesy, and sensitivity and that the
12 rights extended in this Chapter to victims and witnesses of crime
13 be honored and protected by law enforcement agencies,
14 prosecutors, and judges in a manner no less vigorous than the
15 protections afforded criminal defendants.

16 §160.30. Definitions. As used in this Chapter:

17 'Crime' means an act or omission committed by an adult or
18 juvenile that would constitute an offense against the person under
19 all existing territorial statutes.

20 'Homicide victim' means a person whose death was caused
21 by another person under the provisions of Chapter 16 of Title 9,
22 Guam Code Annotated.

23 'Major developments' means arrest or release of the suspect
24 by the police, case deferral by the police, referral to the prosecutor
25 by the police, rejection of the case by the prosecutor, preliminary

1 hearing date, grand jury date, trial and sentencing dates, and the
2 disposition of the case.

3 'Surviving immediate family members' means surviving
4 grandparents, parents, siblings, spouse, children, and any legal
5 guardian of the homicide victim.

6 'Victim' means a person against whom a crime has been
7 committed by either an adult or a juvenile.

8 'Witness' means a person whose testimony or knowledge is
9 desired in any proceeding or investigation by a grand jury or in a
10 criminal investigation, action, prosecution or proceeding.

11 **§160.40. Eligibility of victims.** A victim has the rights
12 afforded by this Chapter and is eligible for the services provided
13 under this Chapter.

14 **§160.50. Basic bill of rights for victims and witnesses.** Upon
15 written request, victims, surviving immediate family members,
16 and witnesses of crime shall have the following rights:

17 (1) To be informed by the police and the prosecuting
18 attorney of the final disposition of the case. If the crime
19 charged is a felony, the victim, a surviving immediate family
20 member, or witness shall be notified of major developments
21 in the case, whenever appropriate, in order to avoid
22 jeopardizing an investigation. The victim, surviving
23 immediate family member, or witness shall be notified
24 whenever the defendant or perpetrator is released from
25 custody. The victim, surviving immediate family member,

1 or witness shall also be consulted and advised about plea
2 bargaining by the prosecuting attorney.

3 (2) To be notified by the prosecuting attorney if a
4 court proceeding to which they have been subpoenaed will
5 not proceed as scheduled.

6 (3) To receive protection from threats or harm in
7 accordance with local witness and victim protection
8 program guidelines.

9 (4) To be informed by the police, victim witness
10 counselor, or other criminal justice personnel, of financial
11 assistance and other social services available as a result of
12 being a witness or a victim of crime, including information
13 on how to apply for the assistance and services.

14 (5) To be provided by the court, whenever possible,
15 with a secure waiting area during court proceedings that
16 does not require them to be in close proximity to defendants
17 and families and friends of defendants.

18 (6) To have any stolen or other personal property
19 expeditiously returned by law enforcement agencies when
20 such property is no longer needed for evidence and the court
21 or the Attorney General has approved its release. If
22 feasible, all such property, except weapons, currency,
23 contraband, property subject to evidentiary analysis, and
24 property, the ownership of which is disputed, shall be
25 returned to the person within ten (10) days of being taken,

1 and the court or the Attorney General has approved its
2 release.

3 (7) To be informed by the Guam Police Department
4 and Department of Corrections of changes planned in the
5 custodial status of the offenders that allow or result in the
6 release of the offender into the community, including
7 furlough, work release, placement on supervised release,
8 release on parole, release on bail bond, release on appeal
9 bond, and final discharge at the end of the prison term.

10 (8) In cases charged and pled to as a felony, to be
11 informed by the prosecutor (by telephone, telefacsimile, or
12 mail) of all trials, changes of pleas, sentencing, and other
13 major developments at least three (3) working days in
14 advance.

15 (9) To be heard by the court as to the actions of the
16 defendant and their effect on the victim and the victim's
17 family; to the absolute right to testify, to be represented by
18 retained counsel, and to call witnesses at sentencing,
19 reduction of sentence, or parole hearing **subject** to
20 relevance; and at the discretion of the court, to testify at any
21 change of plea or hearing to consider acceptance of a plea
22 agreement.

23 (10) To be informed by the Governor prior to the
24 pardon of the defendant or the perpetrator.

25 **§160.60. Responsibility for rights and services.**

1 (a) The courts shall fashion all decisions and orders to
2 enhance the recognition of the rights and the provision of the
3 services set out in this Chapter, to the extent that they will not
4 conflict with the constitutional rights of the defendant.

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

10 **§160.70. Intergovernmental cooperation.** The office of the
11 prosecutor, the police, local social service agencies, the courts,
12 and all other agencies involved in the criminal justice system shall
13 all cooperate with each other to ensure that victims and witnesses
14 of crime receive the rights and services to which they are entitled
15 under this Chapter.

16 **§160.80. Chapter to benefit victim not offenders.** The rights
17 set out in this Chapter are strictly for the benefit of victims and
18 witnesses and not defendants or perpetrators. A defendant shall
19 have no standing to raise any objections to the applicability of the
20 provisions of this Chapter other than to request a continuance at
21 hearing or trial; provided, however, that the violation of any
22 provision of this Chapter or the failure of the court or a
23 prosecutor to comply with such provisions shall not be grounds
24 for appeal or for reconsideration by the court.

25 **§160.90. Conversion of community service to fines.** The

1 Legislature finds that community service is often a better
2 punishment and deterrent to crime than fines or prison sentences,
3 and that it is counterproductive and unfair to allow wealthy
4 defendants or other relatives to simply pay off community service
5 with cash. Sentences for community service may be converted to
6 fines or cash payment only after an evidentiary hearing at which
7 the court finds, independent of any stipulation, that extreme
8 hardship will result from the imposition of community service,
9 that such community service would place a significantly greater
10 burden and unusual hardship on the particular defendant than on
11 the usual defendants, and that justice would be served by such
12 exceptional treatment. Mere inconvenience or economic hardship
13 shall not justify the conversion.

14 **§160.100. Severability.** If any of the provisions of this
15 Chapter, or the application thereof to any person or circumstance,
16 are held invalid, such invalidity shall not affect any other
17 provision or application of this Chapter which can be given effect
18 without the invalid provision or application, and to this end the
19 provisions of this Chapter are severable."

20 **Section 2.** Subsection (a) of Section 8, Public Law 21-52, is hereby
21 amended to read:

22 "(a) The Governor of Guam shall direct the Director of
23 Corrections to plan and undertake a schematic design and
24 program design for a new adult correctional facility."



**Senator Pilar Cruz Lujan
Twenty-First Guam Legislature**

Legislative Secretary

**Committee on Judiciary and Criminal Justice
Chairman**

March 10, 1992

The Honorable Joe T. San Agustin
Speaker
21st Guam Legislature
155 Hesler Street
Agana, Guam 96910

VIA: Chairperson, Committee on Rules

Dear Mr. Speaker:

Please be advised that the Committee on Judiciary and Criminal Justice is respectfully requesting passage of Bill 784.

As you may be aware, Bill 784 is a product of vetoed Bill 316---The Victim's Bill of Rights.

During the January 1992 Session, the Legislature passed Bill 316.

Instead of replicating efforts, I have designated and attached the Committee Report of Bill 316 for Bill 784.

The necessary modifications are reflected.

Call upon me if you should have any inquiries.

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

Sincerely,

Pilar C. Lujan
PILAR C. LUJAN
Chairwoman



Senator Pilar Cruz Lujan
Twenty-First Guam Legislature

Legislative Secretary

Committee on Judiciary and Criminal Justice
Chairman

11/1/91
2:07
JC

October 30, 1991

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

VIA: Chairperson, Committee on Rules

Dear Mr. Speaker:

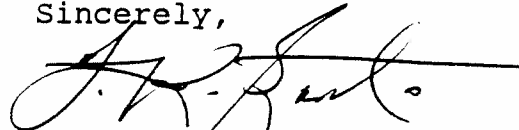
The Committee on Judiciary and Criminal Justice, to which was referred Bill No. 316, wishes to report its findings and recommendations for passage of Substitute Bill No. 316.

The Committee voting record is as follows:

<u>10</u>	TO PASS
<u>0</u>	NOT TO PASS
<u>0</u>	ABSTAIN
<u>0</u>	TO PLACE IN INACTIVE FILE
<u>2</u>	OFF ISLAND

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

Sincerely,


FRANCISCO R. SANTOS
Acting Chairman



Twenty-first Guam Legislature

155 Hesler St.
Agaña, Guam 96910

Tel. (671) 472-3461

Fax: (671) 477-1715

COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

VOTE SHEET ON: SUBSTITUTE BILL 316

COMMITTEE MEMBER	TO PASS	NOT TO PASS	ABSTAIN	TO PLACE IN INACTIVE FILE
<i>Pilar C. Lujan</i> Senator Pilar C. Lujan Chairman	✓	—	—	—
<i>F.R. Santos</i> Senator Francisco R. Santos Vice Chairman	✓	—	—	—
<i>Elizabeth P. Arriola</i> Senator Elizabeth P. Arriola	—	—	—	—
<i>J. George Bamba</i> Senator J. George Bamba	✓	—	—	—
<i>Anthony C. Blaz</i> Senator Anthony C. Blaz	✓	—	—	—
<i>Herminia D. Dierking</i> Senator Herminia D. Dierking	✓	—	—	—
Senator Gordon Mailloux	—	—	—	—
<i>D</i> Senator Don Parkinson	✓	—	—	—
<i>Martha C. Ruth</i> Senator Martha C. Ruth	✓ 10/30/91	—	—	—
<i>Joe T. San Agustin</i> Speaker Joe T. San Agustin	✓	—	—	—
Senator Thomas V.C. Tanaka	—	—	—	—
<i>Antonio R. Unpingco</i> Senator Antonio R. Unpingco	✓	—	—	—

COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE
COMMITTEE REPORT
ON
BILL 784

BILL NO. 784 - A NEW CHAPTER IS ADDED TO 8 GUAM CODE ANNOTATED TO ESTABLISH A BILL OF RIGHTS FOR VICTIMS OF CRIMES.

PREFACE

Bill 784 is a reintroduction of vetoed Bill 316.

During the January 1992 Session of the Guam Legislature, Bill 316 was modified and passed and then transmitted to the Governor for review. However, the modifications made to the measure were cited as problematic and the measure was subsequently vetoed.

In his veto message to the Speaker (ATTACHMENT I), the Governor highlighted the points of concern.

At the direction of the Committee Chairwoman, vetoed Bill 316 was redrafted as Bill 784 to consider the Governor's points of concern.

In order to expedite attention to victims of crime, the Committee Chairwoman has recommended the Committee Report of Bill 316 be appended for background reference.

The Committee on Judiciary and Criminal Justice convened on **Friday, May 17, 1991** in the Legislative Session Hall at 9:35 a.m. to receive testimony on Bill 316.

The hearing was called to order by the Chairperson Pilar C. Lujan. Also present were Committee Members Anthony C. Blaz, Thomas V. C. Tanaka, and Antonio R. Unpingco.

PURPOSE

Bill 316 aims at providing all victims and witnesses of crime with dignity, respect, courtesy and sensitivity in a manner no less vigorous than the protections afforded criminal defendants. Moreover, it guarantees that such victims rights are honored and protected by law enforcement agencies.

As part of the 21st Guam Legislature's efforts to promote victims' rights, provide for the public safety, and strengthen law enforcement and the criminal justice system, Bill 316 was introduced alongside of companion measures which establish a rape crisis center, increase the statute of limitations on criminal sexual conduct, and refurbish all public safety facilities.

TESTIMONY

Noting that "victims and citizens fear criminals," former Senator and Chief-of-Police Jim Miles appeared before the Committee in support of the measure and suggested the criminal justice system be more punitive in dealing with offenders.

As victims of crime, Ms. Jolynn Toves submitted written testimony (Attachment II) of her sister, Mary Ann Guerrero Toves, in support of the measure.

"When this is done (passage of the bill), you will hear the voices of the innocent rejoice," Ms. Toves testified.

Attorney General Elizabeth Barrett-Anderson also appeared before the Committee in favor of the measure. and submitted written testimony. The Attorney General said that "(Bill) 316 is perhaps the most touching and significant bill that hopefully the 21st Legislature will adopt."

Pointing out that victims of crime are "intimidated" with understanding the needed information and counseling services available to them, the Attorney General noted that statutorily guaranteeing such rights will assist them.

The Attorney General added that the existing Victim-Witness Ayuda Services is fully federally funded at a cost of \$180,000 per annum. The Attorney General noted that local commitment and appropriations will further underscore the territory's commitment to victims of crime.

The Attorney General also submitted written testimony (Attachment III) noting that "it is important for victims to have recognized by law what are their legal rights."

Falitofa Finai, the coordinator for the Victim-Witness Ayuda Services, testified in favor of the measure.

Ms. Sue Felix, a volunteer crisis intervention counselor for Victim Advocates Reaching Out (VARO), testified in support of the measure and suggested amendments.

Based on her experiences, Ms. Felix suggested that victims and witnesses be afforded the right not to proceed with a criminal investigation or prosecution.

Additionally, Ms. Felix recommended that the definition of a victim be amended to include a victim's family. Moreover, she suggested that such victims be notified of sentencing hearings and schedule changes. Lastly, she recommended that non-subpoenaed witnesses and third parties be protected with respect to pre and post trial intimidation, threats, or retaliation. between vehicles."

Further, Ms. Felix suggested victim notification of offender release and confidentiality of counseling reports. amendments for purposes of clarification and codification.

Guam Police Chief Adolf Sgambelluri submitted written testimony in favor of the measure and suggested minor modifications. (Attachment IV)

COMMITTEE RECOMMENDATIONS

Given that criminal defendants are afforded extensive pre and post trial rights, the Committee on Judiciary and Criminal Justice notes that victims and witnesses of crime have not been extended similar or equal protections.

As the Victims Bill of Rights, Bill 316 should be modified in the following fashion:

"Section 5. Basic Bill of Rights for victims and witnesses. Upon written request , victims , [and] surviving immediate family members, and witnesses shall ...

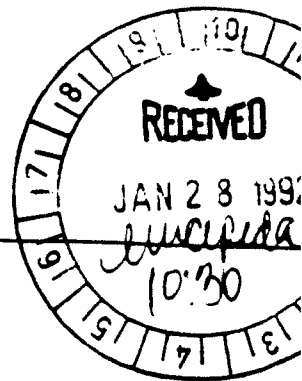
Additionally, the Committee recommends that minor technical modifications suggested by the Chief-of-Police be incorporated. (see Attachment IV)

To ensure such rights are provided, the Committee recommends passage of Substitute Bill 316.



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
PESINAN, MAYAGUAI
AGANA, GUAM 96910



January 27, 1992

The Honorable Joe T. San Agustin
Speaker
Twenty First Guam Legislature
147 Hernan Cortes St.
Agana, Guam 96910

REFER TO
LEGISLATIVE SECRETARY

Dear Mr. Speaker:

I am returning Bill No. 316 which I have vetoed in its entirety.

The Executive Branch, through the vigorous efforts of the Prosecution Division of the Attorney General's Office, the Victims of Crime Advocacy Office and the Criminal Injuries Compensation Commission, has been and continues to be in favor of all reasonable efforts to better protect and assist the unfortunate victims of crimes. The Department of Corrections notifies victims when inmates are released from custody pursuant to Executive Order 88-26. However, this bill as written, while well-meaning, will create uncertainties and delays in the criminal justice system, as well as doubtless challenges to its constitutionality.

This Administration is very supportive of this bill's basic intent to promote victims' rights. In fact the Administration testified in favor of the bill at its public hearing. Unfortunately changes were made in the measure causing it to become fundamentally flawed. Particular problems exist in the following sections:

§160.30 Definitions. The definition of "crime" is limited only to offenses against the person under Title 9 GCA. There are numerous other serious crimes under other statutes which a person may commit and for which the victims thereof should be similarly considered for attention and protection. Apparently the Legislature intended a broader definition because §160.50 (6) of the bill mandates return of stolen property to the victim. This inconsistency exists throughout the measure.

§160.50 (1). This paragraph requires when the crime charged is a felony, that the victim or surviving immediate family member or witness be notified of "major developments" in the case. When the police department is investigating the case it may not be appropriate to require it to take some of the actions required in this bill. For example, a victim is supposed to be informed of the arrest or release of a "suspect". This procedure could give rise to litigation involving defamation and could compromise an investigation, bringing about needless complexities.



Mr. Speaker
January 27, 1992

"Suspect" could be defined as a person indicted by the Grand Jury. Since the Prosecution Division has a victim advocacy office the duty to inform the victim about major developments should be given to the Prosecution Division instead of the Police Department.

§160.50 (6). This paragraph requires the return of property under certain circumstances within ten (10) days after the Police Department takes custody. If the property is needed as evidence in the criminal proceeding then it should not be released until the Court approves release.

§160.50(9). Plea agreements are not final until accepted by the judge. To require such agreements to be submitted to the news media in advance would pre-empt the authority of the court in such matters. 8 GCA §60.80(b) requires that the existence of the plea agreement be disclosed in open court at the time the plea is offered. The court may then accept or reject the agreement. If the court rejects, the defendant is allowed to withdraw his plea and the matter can go to trial. What kind of a fair trial will a defendant get if his plea agreement has been publicized in the media before his trial? If the defendant cannot be assured a fair trial then prosecution of his case is jeopardized.

§160.50(12). The victim has the right to require the court to continue any hearing not held in consonance with provisions of the Bill of Rights chapter. This will place a burden on the judge to determine that notices have been given to the victims, witnesses, and family members. The judge will have to be sure that they have been consulted and advised about plea agreements and notice to the media given. If there is difficulty in reaching a victim or witness or even an unintentional failure to notify someone then the case has to be continued. At worst a speedy trial violation may result in termination of the prosecution. If a jury is sitting then postponement could be extremely costly to the taxpayers. The judges should have continued control over criminal proceedings before them.

§§160.60 and 160.90. §160.60 mandates the manner in which the courts frame their decisions in criminal cases. This infringes upon the autonomy of the judiciary and thus, violates the separation of powers doctrine. §160.90, likewise, may be inorganic in that it would limit the court's authority to fashion a sentence involving community service in certain cases.

§160.95. This section is ambiguous, if not unconstitutionally vague. "Upon request by a victim of any criminal sexual conduct,

Mr. Speaker
January 27, 1992

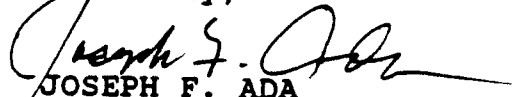
a suspect, if charged with the offense, shall submit to blood and urine examinations." The section does not define either of the terms "suspect" or "criminal sexual conduct." Nor does the section state the purpose of such examinations. At what point would the suspect be considered as "charged" with the offense? Upon complaint by the alleged victim? Upon formal charging by the prosecutor? Upon grand jury indictment? Upon conviction? Does a "suspect" in a fourth degree criminal sexual conduct case which involves "sexual contact" as opposed to "sexual penetration" have to undergo such a test?

Finally, the results of the examinations are required to be given wide dissemination, i.e. to the victim, suspect, Guam Memorial Hospital, Guam Police Department and Department of Corrections. There may be absolutely no need for the test results to be passed around. If the suspect is later found innocent then his or her reputation will have been needlessly ruined by having blood tests which may also be negative passed around. If the suspect or victim does have a sexually transmitted disease then there will be no confidentiality for either one.

I agree that the victims of criminal sexual penetration have the right to know if they have been exposed to sexually transmitted diseases. A more carefully drawn bill is required to assure them of this right. A proposal such as this one involving invasive procedures must be carefully drafted to pass constitutional muster. Unfortunately, proposed §160.95 does not carefully define the circumstances when a person may be subjected to a blood or urine test. It will not successfully withstand a challenge to its constitutionality.

I request that the Legislature examine this issue again and pass a revised version. The Attorney General and the Chief Prosecutor will make themselves available to work with the Legislature on this matter. Together we can do more to protect the victims of crime in this community.

Cordially,


JOSEPH F. ADA
Governor

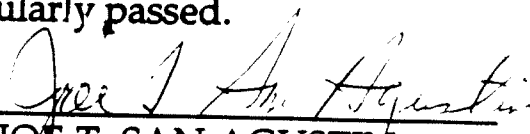
Rec'd 1-27-92
7:05 pm
PC/ayan

210622

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 316 (COR), "AN ACT TO ADD CHAPTER 160 TO TITLE 8, GUAM CODE ANNOTATED, TO ESTABLISH A BILL OF RIGHTS FOR VICTIMS AND WITNESSES OF CRIMES," was on the 10th day of January, 1992, duly and regularly passed.



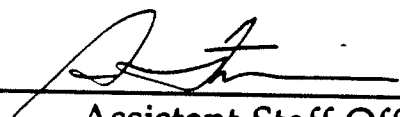
JOE T. SAN AGUSTIN
Speaker

Attested:



PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 15th day of January, 1992,
at 5:05 o'clock P.M.



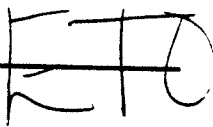
Assistant Staff Officer
Governor's Office

APPROVED:

JOSEPH F. ADA
Governor of Guam

Date: _____

Public Law No. _____



TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Bill No. 316 (COR)

Substituted by the Committee on
Judiciary and Criminal Justice and
further substituted by the Committee
on Rules

Introduced by:

P. C. Lujan
D. Parkinson
D. L. G. Shimizu

J. P. Aguon
E. P. Arriola
J. G. Bamba
A. C. Blaz
M. Z. Bordallo
D. F. Brooks
H. D. Dierking
E. R. Dueñas
E. M. Espaldon
C. T. C. Gutierrez
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M. D. A. Manibusan
M. J. Reidy
M. C. Ruth
J. T. San Agustin
F. R. Santos
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO ADD CHAPTER 160 TO TITLE 8, GUAM
CODE ANNOTATED, TO ESTABLISH A BILL OF
RIGHTS FOR VICTIMS AND WITNESSES OF
CRIMES.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**
2 **Section 1.** Chapter 160 is hereby added to Title 8, Guam Code

1 Annotated, to read:

2 "CHAPTER 160

3 BILL OF RIGHTS FOR CRIME VICTIMS AND WITNESSES

4 §160.10. Short title. This Chapter shall be known and may
5 be cited as the "Bill of Rights for Victims and Witnesses of
6 Crimes".

7 §160.20. Legislative intent. In recognition of the civic and
8 moral duty of victims and witnesses of crimes to cooperate fully
9 and voluntarily with law enforcement and prosecutorial agencies,
10 and in further recognition of the continuing importance of such
11 citizen cooperation to territorial law enforcement efforts and the
12 general effectiveness and well-being of the criminal justice system
13 of this territory, the Legislature declares its intent, in this
14 Chapter, to ensure that all victims and witnesses of crime are
15 treated with dignity, respect, courtesy, and sensitivity and that the
16 rights extended in this Chapter to victims and witnesses of crime
17 are honored and protected by law enforcement agencies,
18 prosecutors, and judges in a manner no less vigorous than the
19 protections afforded criminal defendants.

20 §160.30. Definitions. As used in this Chapter:

21 "Crime" means an act or omission committed by an adult or
22 juvenile that would constitute an offense against the person under
23 Title 9, Guam Code Annotated, the Guam Criminal and
24 Correctional Code (the "Code").

25 "Homicide victim" means a person whose death was caused
26 by another person under the provisions of Chapter 16 of the Code.

27 "Major developments" means arrest or release of the

1 suspect by the police, case deferral by the police, referral to the
2 prosecutor by the police, rejection of the case by the prosecutor,
3 preliminary hearing date, grand jury date, trial and sentencing
4 dates, and the disposition of the case.

5 "Police" means the Guam Police Department.

6 "Surviving immediate family members" means surviving
7 grandparents, parents, siblings, spouse, children, and any legal
8 guardian of the homicide victim.

9 "Victim" means a person against whom a crime has been
10 committed by either an adult or a juvenile.

11 "Witness" means a person whose testimony or knowledge is
12 desired in any proceeding or investigation by a grand jury or in a
13 criminal investigation, action, prosecution or proceeding.

14 §160.40. **Eligibility of victims.** A victim has the rights
15 afforded by this Chapter and is eligible for services provided
16 under this Chapter.

17 §160.50. **Basic rights for victims and witnesses.** Victims,
18 surviving immediate family members, and witnesses of crime
19 shall have the following rights:

20 ✓ (1) To be informed by the police and the prosecuting
21 attorney of the final disposition of the case. If the crime
22 charged is a felony, the victim, a surviving immediate family
23 member, or witness shall be notified of major developments in
24 the case and whenever the defendant or perpetrator is released
25 from custody. The victim, surviving immediate family member,
26 or witness shall also be consulted and advised about plea
27 bargaining by the prosecuting attorney.

1 (2) To be notified by the prosecuting attorney if a court
2 proceeding to which they have been subpoenaed will not
3 proceed as scheduled.

4 (3) To receive protection from threats or harm in
5 accordance with witness and victim protection programs.

6 (4) To be informed by the police, a victim witness
7 counselor, or other criminal justice personnel, of financial
8 assistance and other social services available as a result of
9 being a witness or a victim of crime, including information on
10 how to apply for the assistance and services.

11 (5) To be provided by the court, whenever possible, with
12 a secure waiting area during court proceedings that does not
13 require them to be in close proximity to defendants, their
14 families and friends.

15 ✓ (6) To have any stolen or other personal property
16 expeditiously returned by law enforcement agencies when such
17 property is no longer needed for evidence. If feasible, all such
18 property, except weapons, currency, contraband, property
19 subject to evidentiary analysis, and property, the ownership of
20 which is not disputed, shall be returned to the person within ten
21 (10) days of being taken.

22 (7) To be informed by the police and the Department of
23 Corrections of changes planned in the custodial status of the
24 offenders that may allow or result in the release of the offender
25 into the community, including a parole or probation hearing,
26 furlough, work release, placement on supervised release,
27 release on parole, release on bail bond, release on appeal bond,

1 release on personal recognizance, and final discharge at the
2 end of the prison term.

3 (8) In cases charged and pled to as a felony, to be
4 informed by the prosecutor (by telephone, telefacsimile, or
5 mail) of all trials, change of pleas, sentencing, and other major
6 developments at least three (3) working days in advance.

7 ✓ (9) To require that all written plea agreements for all
8 felonies except felonies of the third degree be submitted to the
9 news media and to be informed of such agreement with an
10 opportunity to read the same in two (2) working days' notice
11 prior to a plea being entered or changed, except that the court
12 may seal such agreement upon good cause being shown
13 therefor.

14 ✓ (10) To be heard by the court as to the actions of the
15 defendant and their effect on the victim and the victim's family;
16 to the absolute right to testify, to be represented by retained
17 counsel, and to call witnesses at sentencing, reduction of
18 sentence, or parole hearing, subject to relevance; and at the
19 discretion of the court, to testify at any change of plea or hearing
20 to consider acceptance of a plea agreement.

21 (11) To be informed by the Governor prior to the pardon
22 of the defendant or perpetrator.

23 ✓ (12) To require the court to continue any hearing not held
24 in consonance with the provisions of this Chapter.

25 **§160.60. Responsibility for rights and services.**

26 (a) The courts shall fashion all decisions and orders to
27 enhance the recognition of the rights and the provision of the

1 services set out in this Chapter, to the extent that they will not
2 conflict with the constitutional rights of the defendant.

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

9 §160.70. **Intragovernmental cooperation.** The office of the
10 Attorney General, the police, the Department of Law, the
11 Department of Public Health and Social Services, all other local
12 social service agencies, the courts, and all other agencies involved
13 in the Guam criminal justice system shall all cooperate with each
14 other to ensure that victims and witnesses of crime receive the
15 rights and services to which they are entitled under this Chapter.

16 §160.80. **Chapter to benefit victims not offenders.** The
17 rights set out in this Chapter are strictly for the benefit of victims
18 and witnesses and not defendants or perpetrators. A defendant
19 shall have no standing to raise any objections to the applicability
20 of the provisions of this Chapter other than to request a
21 continuance at hearing or trial; **provided**, however, that the
22 violation of any provision of this Chapter or the failure of the
23 court or a prosecutor to comply with such provisions shall not be
24 grounds for appeal or for reconsideration by the court.

25 §160.90. **Conversion of community service to fines.** The
26 Legislature finds that community service is often a better
27 punishment and deterrent to crime than fines or prison sentences,

1 and that it is counterproductive and unfair to allow wealthy
2 defendants or their relatives to simply pay off community service
3 with cash. Sentences for community service may be converted to
4 fines or cash payment only after an evidentiary hearing at which
5 the court finds, independent of any stipulation, that extreme
6 hardship will result from the imposition of community service,
7 that such community service would place a significantly greater
8 burden and unusual hardship on the particular defendant than on
9 the usual defendants, and that justice would be served by such
10 exceptional treatment. Mere inconvenience or economic hardship
11 shall not justify the conversion. In such cases of conversion, in
12 order to assure that any defendant converting have a truly
13 comparable sentence and burden, the hourly conversion rate shall
14 be at the defendant's total hourly income or hourly salary, but not
15 less than minimum wage, as recommended before the hearing by
16 Community Service or probation officer, subject to evidence
17 controverting such amount by the defendant or the prosecution,
18 taking into account all overtime and outside income. A victim of
19 the defendant's crime shall be entitled to three (3) working days'
20 notice of such hearing and the right to testify thereat.

21 §160.95. (a) Examination of suspects. Upon request by a
22 victim of any criminal sexual conduct, the suspect, if charged with
23 the offense, shall submit to blood and urine examinations to be
24 conducted by the Department of Public Health and Social Services
25 (the "Department"), which shall administer and analyze such
26 examinations in accordance with standard medical procedures. If
27 the suspect refuses to submit to such an examination voluntarily,

1 the Superior Court, on a showing of probable cause, shall order
2 the suspect to do so.

3 (b) **Results and treatment.** The Department shall furnish,
4 without charge, the results of such examinations to the victim, the
5 suspect, the Guam Memorial Hospital, the Guam Police
6 Department, and the Department of Corrections, and shall,
7 without charge, arrange for the victim any appropriate or
8 necessary treatment from the Guam Memorial Hospital and the
9 Sexual Abuse and Rape Crisis Center.

10 (c) **Authorization for appropriation.** Such sums as may be
11 necessary to carry out the purposes of this Section are hereby
12 authorized to be appropriated from the General Fund.

13 §160.100. **Severability.** If any of the provisions of this
14 Chapter, or the application thereof to any person or circumstance,
15 is held invalid, such invalidity shall not affect any other provision
16 or application of this Chapter which can be given effect without
17 the invalid provision or application, and to this end the provisions
18 of this Chapter are severable."

ATTACHMENT II

MARY ANN GUERRERO TOVES
6245 Renwick Drive #4310
Houston, Texas 77081

May 16, 1991

Dear Senator Pilar Lujan,

I would like to commend you in your effort to right the wrongs committed in the past and applaud your bravery in touching a taboo subject worth much action.

Senator, you have broken down the door that separated the social truth and reality. You have put them side by side for everyone to see. In reality, incest, molestation, fondling and rape have been a frequent occurrence on Guam and has taken the lives of many of our youngsters, most of whom you know and love. In fact, you are probably not aware of it and they are too afraid to tell you. By presenting this bill to the Legislature, in effect, you have told the newborn babies, tiny toddlers, children, teenagers, women and men that it is NOT alright for these people to commit these crimes. You are telling them "It is not your fault" and that when you report the incident, the victim will be protected. "The law is finally on your side."

As you know, a criminal act is a criminal act whether it was committed yesterday, two years ago, or even twenty years ago. This bill is a step in the right direction. These criminals will think twice about committing another crime when this bill is passed. Being a victim of incest, molestation, fondling, and rape is like being a victim of a knife stabbing. The difference is the knife wound can be repaired and can heal rapidly, the wounds of the victim of criminal sexual conduct cannot be repaired so easily, nor can the wounds heal nicely, he or she bleeds a little everyday for the rest of his or her life. In addition, the criminal in the knife stabbing could be charged with attempted murder and receive ten years to life imprisonment, the criminal in the other would only get probation or zero to maybe six years. Is it not only fair for the criminal in the other to receive an equal amount of punishment for the damage done is sometimes even more severe?

Letter to Senator Pilar Lujan
From Mary Ann Guerrero Toves
Bill 315 Criminal Sexual Cnduct

Don't you see, the problem has grown enormously and is affecting every single child on the island. This bill Senators, is your chance to redeem yourselves as leaders and take that step to being the chosen; the people we respect and admire, the people to deliver our children a safer, happier and a more productive life.

I recommend that this Bill 315 Criminal Sexual Conduct Amendst to Bill 316 of the Victims of Criminal Sexual Conduct be passed. When this is done, you will hear the voices of the innocent rejoice.

Sincerely yours,

Mary Ann Guerrero Toves

CC Members of the Guam Legislature

ATTACHMENT II

P.O Box 1732
Agana, Guam 96910
April 24, 1991

21st Guam Legislature

Dear Senators:

I would like to commend Senator Pilar Lujan for introducing the bill that involves the victims rights and the statute of limitations. This legislation will help the minors on our island who will later understand how to fight for our rights. Many of our youths on Guam, suffer from emotional and mental traumas which stem from incest, fondling, molestation, or rape within the families.

Criminal Sexual conduct is astronomical on Guam. I feel something should be done to those who suffer from this crime. I am asking everyone of you "leaders" to at least take into consideration how a sexually abused child, teen, or adult feels and what they have been going through mentally. Think of how many children, teenagers, and adults you could be helping get through this most difficult time of their lives. Please vote and support this major issue.

Our young youths today need to know that the adults now care, and are willing to fight for something that is right. A bill that will not change their lives altogether but, it will surely make a big difference to those who have gone through this psychological and physical hardships. A bill giving courage to the abused who want to be able to get on with their lives. They feel that they are not able to enjoy and get on with their lives if the guilty is still on the streets.

Everything has been aided or provided for the defendant, the supposedly innocent until proven guilty. Under who's eyes the victim or the law?

"We are the future government leaders," VICTIMIZED- Where are the victims rights? Thanks to Senator Pilar Lujan's commendable efforts that will lead victims to a defense that has been denied to the minors or the black out patients who were blocked defensively from the existing laws of the statute of limitations.

Sincerely,

Jolynn Raeanna Jean G. Toves

Jolynn Raeanna Jean G. Toves
11th Grade, Simon Sanchez High School
Daughter of the late G.P.D. Lt. Fransisco C. Toves and
Patricia G. Toves, Yigo



Office of the Attorney General
Territory of Guam

Elizabeth Barrett-Anderson
Attorney General

Donald L. Paillette
Chief Deputy Attorney General

ATTACHMENT III

May 16, 1991

Phone: (671) 472-6841-4
Telefax: (671) 472-2493
Telex: (650) 697-5352

Senator Pilar C. Lujan
Chairwoman
Committee on Judiciary and
Criminal Justice
155 Hesler St.
Agana, Guam 96910


Re: Testimony on Bill No. 316

Dear Madam Chairwoman:

We are here today to testify in support of Bill No. 316. Passage of a Bill of Rights For Victims of Crimes will help solidify the territory's response and support for crime victims. It is important for victims to have recognized by law what are their legal rights. For over 25 years the judicial system has recognized by case law the rights of defendants under the U. S. Constitution. It is ironic that little case law has yet to be developed under the U. S. Constitution which protects the victim of crime. Bill No. 316 will hopefully help establish a legal recognition of the rights of victims of crime. This is a law long overdue.

We urge the Committee's full support of this worthy Bill.

Sincerely,


ELIZABETH BARRETT-ANDERSON
Attorney General



JOSEPH F. ADA
Governor of Guam

FRANK F. BLAS
Lieutenant Governor

Government of Guam
GUAM POLICE DEPARTMENT
287 West O'Brien Drive
Agana, Guam 96910
U.S. Territory of Guam



COLONEL A.P. SGAMBEI
Chief of Police

MAY 16 1991

ATTACHMENT IV

The Honorable Pilar C. Lujan
Chairman, Committee on Judiciary and
Criminal Justice
Twenty-First Guam Legislature
Pacific Arcade
Agana, Guam 96910

Subject: BILL 316, A NEW CHAPTER IS ADDED TO 8 GCA
TO ESTABLISH A BILL OF RIGHTS FOR VICTIMS
OF CRIMES.

Dear Senator Lujan:

The Guam Police Department support the provisions of Bill 316. However, certain Sections of the the Bill require clarification. These are:

1. Section 3, Line 17. I would submit that the wording, "Guam Penal Code" be changed to Guam Criminal and Correctional Code.
2. Section 5, Sub-Section (7) I submit that the requirement of this section is historically germane to the mission of the Department of Corrections and not the Guam Police Department.

Sincerely,


A.P. SGAMBELLURI

Introduced

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

MAR 9'92

Bill No. 784(COR)

Introduced by:

P. C. Lujan *[Signature]*

A NEW CHAPTER IS ADDED TO 8 GUAM
CODE ANNOTATED TO ESTABLISH A BILL
OF RIGHTS FOR VICTIMS OF CRIMES.

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

1 **Section 1. Short Title.** This Act shall be known as the Bill of
2 Rights for victims and witnesses of crimes.

3 **Section 2. Legislative Intent.** In recognition of the civic and moral
4 duty of victims and witnesses of crimes to cooperate fully and voluntarily
5 with law enforcement and prosecutorial agencies, and in further recognition
6 of the continuing importance of such citizen cooperation to territorial law
7 enforcement efforts and the general effectiveness and well-being of the
8 criminal justice system of this territory, the legislature declares in its
9 intent, in this chapter, to ensure that all victims and witnesses of crime are
10 treated with dignity, respect, courtesy, and sensitivity and that the rights
11 extended in this chapter to victims and witnesses of crime are honored and
12 protected by law enforcement agencies, prosecutors, and judges in a manner
13 no less vigorous than the protections afforded criminal defendants.

14 **Section 3. Definitions.** As used in this chapter:

15 "Crime" means an act or omission committed by an adult or juvenile
16 that would constitute an offense against the person under all existing
17 territorial statutes.

18 "Homicide victim" means a person whose death was caused by another
19 person under the provisions of Chapter 16 of 9 Guam Code Annotated.

20 "Major developments" means arrest or release of the suspect by the
21 police, case deferral by the police, referral to the prosecutor by the police,
22 rejection of the case by the prosecutor, preliminary hearing date, grand
23 jury date, trial and sentencing dates, and the disposition of the case.

24 "Surviving immediate family members" means surviving grandparents,
25 parents, siblings, spouse, children, and any legal guardian of the homicide
26 victim.

 "Victim" means a person whom a crime has been committed by either

1 an adult or a juvenile.

2 "Witness" means a person whose testimony or knowledge is desired in
3 any proceeding or investigation by a grand jury or in a criminal
4 investigation, action, prosecution or proceeding.

5 **Section 4. Eligibility of Victims.** A victim has the rights afforded by
6 this chapter and is eligible for the services provided under this chapter.

7 **Section 5. Basic bill of rights for victims and witnesses.** Upon
8 written request, victims, surviving immediate family members, and witnesses
9 of crime shall have the following rights:

10 (1) To be informed by the police and the prosecuting attorney of
11 the final disposition of the case. If the crime charged is a felony,
12 the victim, a surviving immediate family member, or witness shall be
13 notified of major developments in the case, whenever appropriate, in
14 order to avoid jeopardizing an investigation. The victim, surviving
15 immediate family member, or witness shall be notified whenever the
16 defendant or perpetrator is released from custody. The victim,
17 surviving immediate family member, or witness shall also be consulted
18 and advised about plea bargaining by the prosecuting attorney.

19 (2) To be notified by the prosecuting attorney if a court
20 proceeding to which they have been subpoenaed will not proceed as
21 scheduled.

22 (3) To receive protection from threats or harm in accordance with
23 local witness and victim protection program guidelines.

24 (4) To be informed by the police, victim witness counselor, or
25 other criminal justice personnel, of financial assistance and other
26 social services available as a result of being a witness or a victim of
27 crime, including information on how to apply for the assistance and
28 services.

29 (5) To be provided by the court, whenever possible, with a
30 secure waiting area during court proceedings that does not require
31 them to be in close proximity to defendants and families and friends
32 of defendants.

33 (6) To have any stolen or other personal property expeditiously
34 returned by law enforcement agencies when such property is no
35 longer needed for evidence and the Court approved release. If
36 feasible, all such property, except weapons, currency, contraband,
37 property subject to evidentiary analysis, and property, the ownership

1 of which is disputed, shall be returned to the person within ten days
2 of being taken.

3 (7) To be informed by the Guam Police Department and
4 Department of Corrections of changes planned by the department in
5 the custodial status of the offenders that allows or result in the
6 release of the offender into the community, including furlough, work
7 release, placement on supervised release, release on parole, release
8 on bail bond, release on appeal bond, and final discharge at the end
9 of the prison term.

10 (8) In cases charged and pled to as a felony, to be informed by
11 the Prosecutor (by telephone, telefacsimile, or mail) of all trials,
12 changes of pleas, sentencing, and other major developments at least
13 three (3) working days in advance.

14 (9) To be heard by the court as to the actions of the defendant
15 and their effect on the victim and the victim's family; to the absolute
16 right to testify, to be represented by retained counsel, and to call
17 witnesses at sentencing, reduction of sentence, or parole hearing
18 **subject** to relevance; and at the discretion of the court, to testify at
19 any change of plea or hearing to consider acceptance of a plea
20 agreement.

21 (10) To be informed by the Governor prior to the pardon of the
22 defendant or the perpetrator,

23 **Section 6. Responsibility for rights and services.**

24 (a) The courts shall fashion all decisions and orders to enhance the
25 recognition of these rights and the provision of these services, to the extent
26 that they will not conflict with the constitutional rights of the defendant.

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

32 **Section 7. Intergovernmental cooperation.** The office of the
33 prosecutor, the police, local social service agencies, the courts, and all
34 other agencies involved in the criminal justice system shall all cooperate with
35 each other to ensure that victims and witnesses of crime receive the rights
36 and services to which they are entitled under this chapter.

37 **Section 8. Chapter to benefit victims not offenders.** The rights

1 set out in this Chapter are strictly for the benefit of victims and witnesses
2 and not defendants or perpetrators. A defendant shall have no standing to
3 raise any objections to the applicability of the provisions of this Chapter
4 other than to request a continuance at hearing or trial; **provided**, however,
5 that the violation of any provision of this Chapter or the failure of the court
6 or a prosecutor to comply with such provisions shall not be grounds for
7 appeal or for reconsideration by the court.

8 **Section 9. Conversion of community service to fines.** The
9 Legislature finds that community service is often a better punishment and
10 deterrent to crime than fines or prison sentences, and that it is
11 counterproductive and unfair to allow wealthy defendants or their relatives
12 to simply pay off community service with cash. Sentences for community
13 service may be converted to fines or cash payment only after an evidentiary
14 hearing at which the court finds, independent of any stipulation, that
15 extreme hardship will result from the imposition of community service, that
16 such community service would place a significantly greater burden and
17 unusual hardship on the particular defendant than on the usual defendants,
18 and that justice would be served by such exceptional treatment. Mere
19 inconvenience or economic hardship shall not justify the conversion.

20 **Section 10. Severability.** If any of the provisions of this Chapter,
21 or the application thereof to any person or circumstance, is held invalid,
22 such invalidity shall not affect any other provision or application of this
23 Chapter which can be given effect without the invalid provision or
24 application, and to this end the provisions of this Chapter are severable."