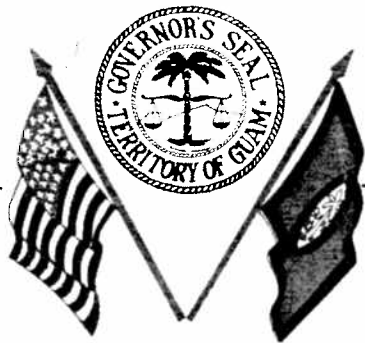


Rec'd by P. Luzain
12/30/94
10:45 AM.



Territory of Guam
Territorio de Guam

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

RECEIVED

OFFICE OF THE SPEAKER

DATE: 12 31 94

TIME: 11 20 71

RECD BY: ipz

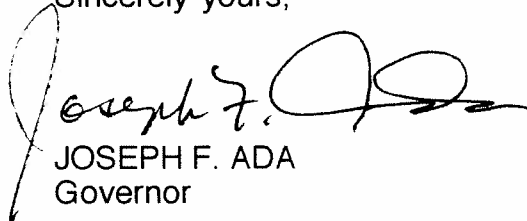
DEC 30 1994

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

Dear Mr. Speaker:

Transmitted herewith is Bill No. 1132, which I have signed into law this date as
Public Law 22-160.

Sincerely yours,


JOSEPH F. ADA
Governor

220928

Attachment



Commonwealth Now!

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 1132 (LS), "AN ACT TO ADD A NEW CHAPTER 30 TO TITLE 9, GUAM CODE ANNOTATED, TO BE KNOWN AS THE FAMILY VIOLENCE ACT, AND TO REPEAL §31.60, TITLE 9, GUAM CODE ANNOTATED, ON CRIMINAL SPOUSE ABUSE; TO AMEND §2105.1 OF TITLE 4, GUAM CODE ANNOTATED, ON YOUTH MEMBERSHIP OF BOARDS; AND TO RENAME THE RAPE CRISIS CENTER THE HEALING HEARTS CRISIS CENTER," was on the 9th day of December, 1994, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



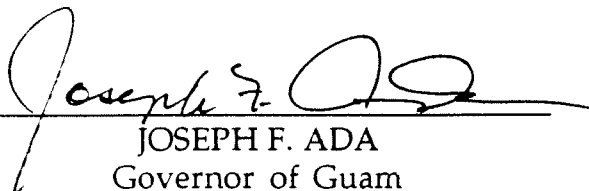
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 21st day of December, 1994, at
3:55 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: DEC 30 1994

Public Law No. 22-160

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 1132

As substituted on the floor.

Introduced by:

M. D. A. Manibusan

P. C. Lujan

E. P. Arriola

H. D. Dierking

M. Z. Bordallo

D. F. Brooks

T. C. Ada

J. P. Aguon

C. T. C. Gutierrez

T. S. Nelson

V. C. Pangelinan

D. Parkinson

E. D. Reyes

J. T. San Agustin

F. E. Santos

D. L. G. Shimizu

J. G. Bamba

A. C. Blaz

F. P. Camacho

T. V. C. Tanaka

A. R. Unpingco

AN ACT TO ADD A NEW CHAPTER 30 TO TITLE 9, GUAM CODE ANNOTATED, TO BE KNOWN AS THE FAMILY VIOLENCE ACT, AND TO REPEAL §31.60, TITLE 9, GUAM CODE ANNOTATED, ON CRIMINAL SPOUSE ABUSE; TO AMEND §2105.1 OF TITLE 4, GUAM CODE ANNOTATED, ON YOUTH MEMBERSHIP OF BOARDS; AND TO RENAME THE RAPE CRISIS CENTER THE HEALING HEARTS CRISIS CENTER.

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

2 **Section 1. Legislative intent.** The Legislature finds that many persons
3 are physically abused by their own family and household members. It is
4 significant to note that in 1992, the Guam Police Department reported 941
5 cases of family violence, while in 1993 these family violence cases increased to
6 1,346, an increase of forty-three percent from 1992. As of August 30, 1994,
7 1,059 family violence cases have already been reported. The following
8 statistics set out the percentages of all offenses reported in a specific category
9 which involved family violence:

10	Category of		Percentages which were
11	<u>offenses reported:</u>	<u>Years:</u>	<u>family violence related:</u>
12	Murder:	1992,	45.5%,
13		1993,	27.3%,
14		1994,	60%,
15	Aggravated assault:	1992,	9.5%
16		1993,	24.2%,
17		1994,	28%,
18	Simple assault:	1992,	24.7%,
19		1993,	41.9%,
20		1994,	46%,
21	Sex offenses:	1992,	45.7%,
22		1993,	47.4%,
23		1994,	49%,
24	Disorderly conduct:	1992,	14.3%,
25		1993,	24.1%,
26		1994,	28%.

1 National statistics cited by the **Family Violence Prevention Fund** (a
2 national public policy and education institute) demonstrate that every 7.4
3 seconds a woman is beaten by her husband. A 1993 national poll found that
4 more people (34% of men and women) have directly witnessed an incidence of
5 domestic violence than of muggings and robberies combined (19%); and 14%
6 of women acknowledged having been violently abused by a husband or
7 boyfriend. 30% of women murdered in the United States in 1992 were
8 murdered by a husband or boyfriend.

9 According to a 1992 article published in the **Juvenile and Family Court**
10 **Journal** entitled "Reducing Family Violence: The Role of the Family Violence
11 Council," pregnancy is an especially hazardous time for women. 30% of all
12 pregnant women are battered. These abused women are two times more
13 likely to miscarry and four times more likely to have low birthweight babies
14 than the norm. More babies are born with birth defects as a result of the
15 mother's being battered than as a result of a combination of all diseases and
16 illnesses for which pregnant women are now immunized.

17 Family violence perpetuates itself, for a child who is raised in an
18 atmosphere of violence is more likely to become both a victim and an abuser.
19 Children who witness abuse are more likely to attempt suicide, to overuse
20 drugs and alcohol, to run away from home, to engage in teenage prostitution
21 and in other delinquent behavior, and to commit sexual assault crimes. Other
22 members of the household suffer from family violence, there being an
23 estimated 1,000,000 incidents of elderly abuse occurring annually in the
24 United States.

25 In cases of family violence, the victim may require court assistance to
26 keep the abuser away, or may be asking for help to keep a family safely
27 together. Some cases call for stern punishment, while others are best handled

1 by rehabilitative programs. The Guam courts already labor under a heavy
2 caseload of family violence, but statistics show that only a small percentage
3 of these offenses are ever reported, especially if sexual conduct is involved.
4 The Federal Bureau of Investigation reports that domestic violence is under-
5 reported by a factor which is greater than ten to one, that is, for every one
6 case which is reported a minimum of ten cases go unreported. Family
7 violence exacts a heavy toll, both in suffering and dollars.

8 Some victims are afraid to report their abuse because they fear that the
9 response of the police or the courts will not be swift enough, or certain
10 enough, to protect them. Other victims fear that their voices will not be
11 heard in court, and that the responses will be either too harsh or too lenient.
12 Of the cases that are reported, many happen without independent witnesses,
13 or involve conduct which is deserving of being against the law, but does not
14 fit properly within the definitions of any of the existing criminal codes. Even
15 though statistics show that early intervention and the fact of an arrest can
16 help prevent future acts of violence, current laws do not give enough support
17 to the police or the prosecutor who often must take action under difficult
18 circumstances, and also do not give enough support to those victims who are
19 requesting enforced rehabilitation of the offender rather than traditional
20 penal sanctions.

21 It is the intention of the Legislature in enacting this Chapter:

22 1. To promote the protection and safety of all victims of
23 family violence in a fair, prompt, and effective manner, and to
24 prevent future violence in all families;

25 2. To promote early intervention in situations of family
26 violence by giving clear authorization to peace officers to arrest
27 offenders when there is reasonable cause, and to assist the

1 prosecution of these cases by defining a criminal violation—family
2 violence—which may be charged in **addition** to any other crimes that
3 may have been committed;

4 3. To send a clear message to victims and abusers alike that
5 repeat offenders, and persons who violate court orders that are
6 intended to protect victims, will be swiftly arrested and subjected to
7 prosecution;

8 4. To assist Guam's heavily burdened courts in handling these
9 cases of family violence by giving judges greater authority to divert
10 appropriate defendants into enforced education and treatment
11 programs, as well as providing for mandatory penalties in certain
12 situations; and

13 5. To give victims and families greater access to the courts by
14 providing for pre-trial procedures at which the testimony of the
15 victim may be considered.

16 **Section 2. New chapter.** A new Chapter 30 is hereby added to Title 9,
17 Guam Code Annotated, to read:

18 **"CHAPTER 30**

19 **FAMILY VIOLENCE**

20 **§30.10. Definitions.** As used in this Chapter:

21 (a) "Family violence" means the occurrence of one (1) or more of the
22 following acts by a family or household member, but does **not** include acts of
23 self-defense or defense of others:

24 1. Attempting to cause or causing bodily injury to another
25 family or household member;

26 2. Placing a family or household member in fear of bodily
27 injury.

1 (b) "Family or household members" include:

2 1. Adults or minors who are current or former spouses;

3 2. Adults or minors who live together or who have lived
4 together;

5 3. Adults or minors who are dating or who have dated;

6 4. Adults or minors who are engaged in or who have engaged
7 in a sexual relationship;

8 5. Adults or minors who are related by blood or adoption to
9 the fourth degree of affinity;

10 6. Adults or minors who are related or formerly related by
11 marriage;

12 7. Persons who have a child in common; and

13 8. Minor children of a person in a relationship described in
14 paragraphs (1) through (7) above.

15 (c) "Bodily injury" as used in this Chapter, has the same meaning as
16 that provided in subsection (b) of §16.10 of this title;

17 (d) "Attempt" as used in this Chapter, has the same meaning as that
18 provided in §13.10 of this title;

19 (e) "Peace officer" means any person so defined in §5.55, Title 8, Guam
20 Code Annotated;

21 (f) "Victim" means any natural person against whom a crime, as
22 defined under the laws of Guam, has been committed or attempted to be
23 committed;

24 (g) "Witness" means any natural person, (i) having knowledge of the
25 existence or nonexistence of facts relating to any crime, or (ii) whose
26 declaration under oath is received or has been received as evidence for any
27 purpose, or (iii) who has reported any crime to any peace officer, or (iv) who

1 has been served with a subpoena issued under the authority of any court in
2 Guam, or (iv) who would be believed by any reasonable person to be an
3 individual described in subparagraphs (i) through (iv), above, inclusive;

4 (h) "Prosecuting attorney" as used in this Chapter means the Attorney
5 General of Guam and those persons employed by the Attorney General's
6 office specifically designated by the Attorney General.

7 **§30.20. Family violence.** (a) Any person who intentionally, knowingly,
8 or recklessly commits an act of family violence, as defined in §30.10 of this
9 Chapter, is guilty of a misdemeanor, or of a third degree felony.

10 (b) Upon a written, noticed motion prior to commencement of trial, the
11 defendant may move that a felony charge filed pursuant to this §30.20 be
12 reduced to a misdemeanor. Whether any charge shall proceed as a
13 misdemeanor or a felony rests within the discretion of the court.

14 (c) In determining whether any felony charge filed pursuant to this
15 §30.20 should be reduced to a misdemeanor, the court shall consider the
16 following factors, among others:

- 17 1. The extent or seriousness of the victim's injuries;
- 18 2. The defendant's history of violence against the same victim
19 whether charged or uncharged;
- 20 3. The use of a gun or other weapon by the defendant;
- 21 4. The defendant's prior criminal history;
- 22 5. The victim's attitude and conduct regarding the incident;
- 23 6. The involvement of alcohol or other substance, and the
24 defendant's history of substance abuse as reflected in the defendant's
25 criminal history and other sources; and
- 26 7. The defendant's history of and amenability to counseling.

1 (d) If the court, after hearing, finds substantial evidence that a victim
2 suffered serious bodily injury as defined in subsection (c) of §16.10 of this title,
3 no felony charged filed under this §30.20 shall be reduced to a misdemeanor
4 unless the court finds that due to unusual circumstances a reduction of the
5 charge is manifestly in the interest of justice.

6 (e) The fact that an alleged criminal act involved family violence as
7 defined in §30.10 of this Chapter shall not preclude the prosecuting attorney
8 from charging and prosecuting the defendant for any other violations of law,
9 subject to the provisions set forth in §1.22 of this title;

10 (f) In any case in which a person is convicted of violating this §30.20
11 and probation is granted, the court shall require participation in an education
12 and treatment program as a condition of probation unless, considering all the
13 facts and the circumstances, the court finds participation in an education and
14 treatment program inappropriate for the defendant.

15 (g) If probation is granted, or the imposition of a sentence is
16 suspended, for any person convicted under subsection (a) of this §30.20 who
17 previously has been convicted under such subsection (a) for an offense that
18 occurred within seven (7) years of the offense of the second conviction, it shall
19 be a condition of such probation or suspended sentence that he or she be
20 punished by imprisonment for not less than ten (10) days, and that he or she
21 participate in, for no less than one (1) year, and successfully complete an
22 education and treatment program, as designated by the court. However, the
23 court, upon a showing of good cause, may find that the minimum
24 imprisonment, or the participation in an education and treatment program,
25 or both the minimum imprisonment and participation in an education and
26 treatment program, as required by this subsection, shall not be imposed and
27 may grant probation or the suspension of the imposition of a sentence.

1 (h) If probation is granted or the imposition of a sentence is suspended
2 for any person convicted under subsection (a) of this §30.20 who previously
3 has been convicted of two (2) or more violations of such subsection (a) for
4 offenses that occurred within seven (7) years of the most recent conviction, it
5 shall be a condition of such probation or suspended sentence that he or she be
6 punished by imprisonment for not less than thirty (30) days and that he or she
7 participate in, for no less than one (1) year, and successfully complete an
8 education and treatment program, as designated by the court. However, the
9 court, upon a showing of good cause, may find that the minimum
10 imprisonment, or the participation in an education and treatment program,
11 or both the minimum imprisonment and participation in an education and
12 treatment program, as required by this subsection, shall not be imposed and
13 may grant probation or the suspension of the imposition of a sentence.

14 **§30.30. Powers and duties of peace officers to arrest for crimes**
15 **involving family violence; determination of primary aggressor; required**
16 **report.** (a) If a peace officer has reasonable cause to believe that a person
17 has committed a felony or misdemeanor involving family violence, the peace
18 officer shall presume that arresting and charging the person is the
19 appropriate response.

20 (b) If a peace officer receives complaints of family violence from two
21 (2) or more opposing persons, the officer shall evaluate each complaint
22 separately to determine who was the primary aggressor. If the officer
23 determines that one (1) person was the primary aggressor, the officer need
24 not arrest the other person believed to have committed family violence but
25 the peace officer shall document to the best of his or her ability the evidence
26 concerning the actions of each participant in the incident.

1 (c) In determining whether a person is the primary aggressor the
2 officer shall consider:

- 3 1. Prior complaints of family violence;
- 4 2. The relative severity of the injuries inflicted on each person;
- 5 3. The likelihood of future injury to each person;
- 6 4. Whether one of the persons acted in self-defense;
- 7 5. The use or threatened use of a weapon; and
- 8 6. The use or threatened use of physical force.

9 (d) A peace officer shall not:

10 1. Threaten, suggest, or otherwise indicate the possible arrest
11 of all parties to discourage requests for intervention by peace officers
12 by any party; or,

13 2. Base the decision to arrest or not to arrest on:

- 14 (i) The specific consent or request of the victim; or,
- 15 (ii) The officer's perception of the willingness of a victim
16 of or witness to the family violence to testify or otherwise
17 participate in a judicial proceeding.

18 (e) In addition to any other report required, a peace officer who does
19 not make an arrest after investigating a complaint of family violence or who
20 arrests two (2) or more persons for a crime involving family violence must
21 submit a written report setting forth the grounds for not arresting or for
22 arresting both parties.

23 **§30.40. Violation of a court order.** (a) Any knowing violation of any of
24 the following court orders shall be a misdemeanor punishable by a fine of not
25 more than One Thousand Dollars (\$1,000), or by imprisonment for not more
26 than one (1) year, or by both such fine and imprisonment:

1 1. An order enjoining a person from threatening to commit or
2 committing acts of family violence against, or from harassing,
3 annoying, or molesting, a family or household member, or any
4 person named in the order;

5 2. An order removing or excluding a person from the family
6 dwelling or from the dwelling of another, or from any habitable
7 property as defined in subsection (b) of §34.11 of this title;

8 3. An order requiring a person to stay away from the
9 residence, dwelling, school, day care center, place of employment, or
10 any other specified place or from a specified person, within five
11 hundred feet (500') of the specified place or specified person;

12 4. An order prohibiting a person from possessing a firearm or
13 other weapon specified by the court; or

14 5. An order in a criminal case prohibiting the defendant from
15 harassing, annoying, telephoning, contacting, or otherwise
16 communicating with a victim or specified witness, either directly or
17 indirectly.

18 (b) In the event of a conviction for a violation of subsection (a) of this
19 §30.40 which results in bodily injury as defined in subsection (b) of §16.10 of
20 this title, the defendant shall be imprisoned for at least forty-eight (48) hours.

21 (c) In the event of a conviction for a violation under subsection (b) of
22 this §30.40, occurring within one (1) year of a conviction of either subsections
23 (a) or (b), committed against the same victim, the defendant shall be
24 imprisoned for no less than thirty (30) days.

25 (d) When a peace officer has reasonable cause to believe that a person
26 has violated one (1) of the orders of the court specified in subsection (a) of this
27 §30.40 and verifies the existence of the order, the peace officer shall presume
28 that arresting and charging the person is the appropriate response.

1 (e) An admission by the defendant that he or she had knowledge of the
2 court order shall be admissible in court notwithstanding the **corpus delicti**
3 rule.

4 **§30.50. Authority of peace officer to seize weapons.** For a crime
5 involving family violence, a peace officer:

6 (a) Shall, incident to an arrest, seize all weapons that are alleged to
7 have been involved or threatened to be used in the commission of a crime.

8 (b) May seize a weapon that is in the plain view of the officer or was
9 discovered pursuant to consensual search, as necessary for the protection of
10 the officer or other persons.

11 **§30.60. Disclosure of family violence shelter.** (a) Any person who
12 knowingly publishes, disseminates, or otherwise discloses the location of any
13 family violence shelter or any place designated as a family violence shelter
14 with the intent to harass, annoy, harm, or injure in any way another person,
15 or to thwart or interfere in any manner with the orderly administration or
16 operation of the shelter, is guilty of a misdemeanor.

17 (b) For purposes of this §30.60, "family violence shelter" means a
18 confidential location which provides emergency services on a 24-hour basis
19 for victims of family violence, and their families.

20 **§30.70. Spousal privileges inapplicable in criminal proceedings**
21 **involving family violence.** Notwithstanding any other provision of law, the
22 following evidentiary privileges do **not** apply in any criminal proceeding in
23 which a spouse or other family or household member is the victim an alleged
24 crime involving family violence perpetrated by the other spouse:

25 (a) The privilege not to testify against one's spouse.

26 (b) The privilege for confidential marital communication.

1 **§30.80. Diversion eligibility.** Notwithstanding any other provision of
2 law, and upon the determination of the judge, this §30.80 shall apply
3 whenever a case is before the court upon an accusatory pleading for any
4 criminal act against a family or household member as defined in subsection (b)
5 of §30.10 of this title.

6 (a) The following persons are ineligible for the diversion process:

7 1. A defendant who has a felony conviction for any offense
8 involving violence within seven (7) years prior to the alleged
9 commission of the charged offense;

10 2. A defendant who has been diverted pursuant to this section
11 within five (5) years prior to the commission of the charged offense
12 whether or not the prior diversion resulted in expungement;

13 3. A defendant who has been sentenced for a violation of
14 §30.40 of this Chapter within one (1) year prior to the alleged
15 commission of the charged offense; or

16 4. A defendant whose current charge involves serious bodily
17 injury as defined in subsection (c) of §16.10 of this Title, or criminal
18 sexual conduct involving sexual penetration as defined in item (9) of
19 subsection (d) of §25.10, unless the court finds that due to unusual
20 circumstances diversion of the criminal proceedings is manifestly in the
21 interest of justice.

22 (b) The fact that a defendant is not made ineligible by subsection (a) of
23 this §30.80 does not automatically entitle a defendant to the diversion
24 process.

25 (c) The prosecuting attorney shall determine whether the defendant
26 is ineligible for diversion by reason of any of the factors set forth in subsection

1 (a) of this §30.80. If the prosecutor finds that the person is not ineligible, and
2 will agree to diversion, the prosecutor shall notify the defendant.

3 (d) If the prosecutor finds that the defendant is ineligible, or if the
4 prosecutor will not agree to diversion although the defendant is not excluded
5 by reason of subsection (a) of this §30.80, the prosecutor shall notify the
6 defendant.

7 (e) Any defendant who is not specifically ineligible for the diversion
8 process pursuant to subsection (a) of this §30.80 may apply to the court, by
9 noticed motion for an order granting diversion. The prosecuting attorney
10 may oppose this application.

11 **§30.80.1. Diversion hearing.** (a) Upon noticed motion, the court shall
12 hold a hearing and, after consideration of any and all information the court
13 believes to be relevant to its decision, the court shall determine if the
14 defendant consents to further proceedings under this §30.80.1 and waives his
15 or her right to a speedy trial, and if the defendant should be diverted from the
16 criminal proceedings and referred for an education and treatment program
17 directed specifically to the violent conduct of the defendant. The court, in
18 determining the defendant's eligibility for diversion, shall consider the nature
19 and extent of the injury inflicted upon the victim, any prior incidents of family
20 violence by the defendant, and any factors which would adversely influence
21 the likelihood of successful completion of the diversion process. If the court
22 does not deem the defendant a person who would be benefited by diversion,
23 or if the defendant does not consent to participate, the criminal proceedings
24 shall continue as in any other case. If the court orders a defendant to be
25 diverted, the court shall make inquiry into the financial condition of the
26 defendant and upon a finding that the defendant is able in whole or part to

1 pay the expense of such counseling the court may order him or her to pay for
2 all or part of such expense.

3 Nothing in this subsection shall prohibit the placement of a defendant in
4 another appropriate counseling program if the court determines that there is
5 no available education and treatment program.

6 (b) At such time that the defendant's case is diverted, any bail bond or
7 undertaking, or deposit in lieu thereof, on file by or on behalf of him or her
8 shall be exonerated, and the court shall enter an order so directing.

9 (c) The period during which further criminal proceedings against a
10 person may be diverted pursuant to this section shall be no less than one (1)
11 year, and no more than three (3) years if a misdemeanor is charged, and no
12 more than five (5) years if a felony is charged.

13 (d) The court shall set forth in writing or state on the record its
14 reason for granting or denying diversion. The court's decision in such a
15 matter shall be final and shall not constitute an appealable order.

16 **§30.80.2. Reinstitution of criminal proceedings; dismissal.** If it appears
17 to the prosecuting attorney, the court or the probation department that the
18 divertee under §30.80.1 of this Chapter is performing unsatisfactorily in the
19 assigned program, or that the divertee is not benefiting from education and
20 treatment programs, or that he or she has been convicted of any offense
21 involving violence, after notice to the divertee, and upon motion by the
22 prosecuting attorney or on the court's own motion, the court shall hold a
23 hearing to determine whether the criminal proceedings should be
24 reinstated. If the court finds by substantial evidence that the divertee is not
25 performing satisfactorily in the assigned program, or that the divertee is not
26 benefiting from diversion, or the court finds that the divertee has been
27 convicted of a crime as set out above, the criminal case shall be referred back

1 to the court for resumption of the criminal proceedings. If the divertee has
2 performed satisfactorily during the period of diversion, at the end of the
3 period of diversion, the criminal charges shall be dismissed upon motion or
4 application of the defendant.

5 **§30.80.3. Use of arrest record following successful completion of**
6 **diversion program.** Any records filed with the Guam Police Department and
7 the Office of the Attorney General, Prosecution Division, shall set out the
8 disposition of those cases diverted pursuant to §30.80.1 of this Chapter. Upon
9 successful completion of a diversion program the arrest upon which the
10 diversion was based shall be expunged as provided by Chapter 11 of Title 8,
11 Guam Code Annotated. The divertee may indicate in response to any
12 question concerning his or her prior criminal record that he or she was not
13 arrested or diverted for such offense. A record pertaining to an arrest
14 resulting in successful completion of the diversion process shall not, without
15 the divertee's consent, be used in any way which could result in the denial of
16 any employment, benefit, license, or certificate.

17 **§30.80.4. Admissibility of statement or information procured therefrom**
18 **made during determination of defendant's eligibility for diversion.** Any
19 statement or any information procured therefrom, with respect to the specific
20 offense with which the defendant is charged, which is made to any probation
21 officer or counselor during the process of determining the defendant's
22 eligibility for diversion or subsequent to the granting of diversion, shall be in-
23 admissible.

24 **§30.90. Training course for handling family violence complaints.** The
25 Guam Police Department shall implement a course or courses of instruction
26 for the training of police officers in Guam in the handling of family violence
27 complaints and also shall develop guidelines for law enforcement response to

1 family violence. The course or courses of instruction and the guidelines shall
2 stress enforcement of criminal laws in family violence situations, availability
3 of civil remedies and community resources, and protection of the victim.

4 **§30.100. Maintenance of systematic records.**

5 (a) Law enforcement agencies shall maintain a complete and
6 systematic record of all protection orders with respect to family violence
7 incidents, including orders which have not yet been served, restraining
8 orders, and proofs of service in effect. This shall be used to inform law
9 enforcement officers responding to family violence calls of the existence,
10 terms, and effective dates of protection orders in effect.

11 (b) The terms and conditions of the protection under order remain
12 enforceable, notwithstanding the acts of the parties, and may be changed
13 only by order of the court.

14 (c) Upon request, law enforcement agencies shall serve the court
15 orders specified in §30.40 of this Chapter upon the party to be restrained at
16 the scene of a family violence incident or at any time the party is in custody."

17 **Section 3. Repeal.** §30.61 of Title 9, Guam Code Annotated, is hereby
18 repealed.

19 **Section 4. Impact statement and report of costs.** Within sixty (60) days
20 of the enactment of this Act, the presiding judge of the Superior Court, the
21 Attorney General, the chief executive officer of the Superior Court, the Public
22 Defender Service Corporation, the Guam Police Department, the
23 Department of Corrections, the Department of Youth Affairs, the
24 Department of Mental Health and Substance Abuse, the Department of
25 Public Health and Social Services, and the Guam Housing and Urban
26 Renewal Authority, respectively, shall each transmit to the Legislature a
27 report of the impact of this Act upon their respective agencies and the cost

1 estimates for additional resources which may be necessary to effectuate the
2 provisions of this Act.

3 **Section 5. Severability clause.** If any provision of this Act, or the
4 application thereof to any person or circumstance, is held invalid, such
5 invalidity shall not affect any other provision or application of this Act which
6 can be given effect without the invalid provision or application, and to this
7 end the provisions of this Act are severable.

8 **Section 6. Legislative findings.** Due to the serious and growing
9 problem of family violence in Guam, the Legislature finds that in addition to
10 the enactment of legislation in the area of family violence, there is a need to
11 further develop and fund public education, and prevention and treatment
12 programs. In assessing the need for such programs, the Legislature will seek
13 input from the Family Violence Task Force, created by Executive Order No.
14 93-14, and from the community-at-large.

15 **Section 7.** §2105.1 of Title 4, Guam Code Annotated, is amended to
16 read:

17 "§2105.1. **Same: youth membership.** In addition to all other
18 statutory conditions and qualifications concerning eligibility for
19 appointment to voting membership on and composition of the
20 following boards and commissions: Agricultural Board of
21 Commissioners, Chamorro Language Commission, Commission on
22 Persons with Disabilities, Board of Cosmetology, Council on the Arts
23 and Humanities, Criminal Injuries Compensation Commission,
24 Grand Prix Racing commission, Guam Community College Board of
25 Trustees, Guam Council on Youth Affairs, Guam Educational
26 Telecommunication Corp., Guam Mass Transit Authority Board,
27 Guam Museum Board of Trustees, Guam Public Library Board,

1 Guam Visitors Bureau Board, Guma Onra Commission, Mental
2 Health and Substance Abuse Council, Parks and Recreation
3 Commission, Vocational Rehabilitation Board, and Status of Women
4 Commission, no less than one (1) appointee shall meet the following
5 criterion: The appointee **must** be eighteen (18) years of age or older
6 but not over twenty-six (26) prior to the date of appointment. Such
7 appointee's term of appointment shall expire on such appointee's
8 26th birthday."

9 **Section 8. Renaming the Rape Crisis Center the "Healing Hearts Crisis**
10 **Center"**. (a) **Legislative intent.** With the incidence of rape and sexual abuse
11 on Guam increasing in recent years, the Twenty-First Guam Legislature
12 found to its dismay that a corresponding increase in services to the victims of
13 such abuse simply did not exist. As a result of this disparity, priority medical
14 attention was frequently not given to these individuals, thereby prolonging
15 their suffering and pain. In response to this unfortunate situation, the
16 Twenty-First Guam Legislature determined that a Rape and Sexual Abuse
17 Center which would administer full and immediate medical attention was
18 necessary to more adequately provide for the victims of rape and sexual
19 abuse. Public Law 21-44, effective September 18, 1991, mandated that this
20 center be constructed and that a Rape Crisis Team be assembled for
21 designing, constructing, staffing, and operating a Rape and Sexual Abuse
22 Center.

23 It has come to the attention of the Twenty-Second Guam Legislature
24 that members of this Rape Crisis Team have called for the center to be
25 renamed the "Healing Hearts Crisis Center" because of the more positive
26 connotation of the latter name, which projects a more sensitive environment,
27 and one more conducive to recovery and healing.

1 (b) **Renaming of the Rape Crisis Center.** Notwithstanding any other
2 law to the contrary, the Rape Crisis Center, created by Public Law 21-44, is
3 hereby renamed the "Healing Hearts Crisis Center." Any provisions in Guam
4 law referring to the Rape Crisis Center are hereby amended to refer to the
5 Healing Hearts Crisis Center.

VOTING SHEET
(as revised)

6
12/9/94

Bill No. 1132

Resolution No. _____

(Date)

Question: _____

Senators	Aye	No	Declined to Vote	Required to vote	Excused from voting	ABSENT/OUT DURING ROLL CALL
Ada, Thomas C.	✓					
AGUON, John P.	✓					
ARRIOLA, Elizabeth P.	✓					
BAMBA, George J.	✓					
BLAZ, Anthony C.	✓					
BORDALLO, Madeleine Z.						✓
BROOKS, Doris F.	✓					
CAMACHO, Felix P.	✓					
DIERKING, Hermina D.	✓					
GUTIERREZ, Carl T. C.	✓					
LUJAN, Pilar C.	✓					
MANIBUSAN, M. D. A.	✓					
NELSON, Ted S.	✓					
PANGELINAN, Vicente C.	✓					
PARKINSON, Don	✓					
REYES, Edward D.	✓					
SAN AGUSTIN, Joe T.	✓					
SANTOS, Francis E.	✓					
SHIMIZU, David L. G.	✓					
TANAKA, Thomas V. C.	✓					
UNPINGCO, Antonio R.	✓					

TOTAL

20					1
----	--	--	--	--	---

Twenty-Second Guam Legislature

Senator Pilar Cruz Lujan

Legislative Secretary

Chairperson - Committee on Judiciary and Criminal Justice

December 6, 1994

Honorable Joe T. San Agustin
Speaker, Twenty-Second 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 1132 wishes to report its findings and recommendations to do pass **Substitute Bill 1132**.

The Committee voting record is as follows:

<u>11</u>	TO PASS
<u>0</u>	NOT TO PASS
<u>0</u>	ABSTAIN
<u>0</u>	TO PLACE IN INACTIVE FILE

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

Sincerely


PILAR C. LUJAN

**TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session**

Bill No. 1132

As Substituted by the Committee on
Judiciary and Criminal Justice

Introduced by:

M. D. A. Manibusan
P. C. Lujan
E. P. Arriola
H. D. Dierking
M. Z. Bordallo
D. F. Brooks

**AN ACT TO ADD A NEW CHAPTER 30 TO
TITLE 9, GUAM CODE ANNOTATED, ON
FAMILY VIOLENCE, AND TO REPEAL
SECTION 31.60, OF TITLE 9, GUAM CODE
ANNOTATED.**

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

3 **Section 1. Legislative Intent.** The Legislature finds that
4 many people are abused by their family and household members. It
5 is significant to note that locally, in 1992, the Guam Police
6 Department reported 941 cases of family violence. In 1993, the
7 number of family violence cases increased to 1,346 total cases; a
8 significant increase of forty-three (43%) percent from 1992. As of
9 August 30, 1994, 1,059 family violence cass have already been
10 reported this year. The following statistics indicate the percentage of
11 all offenses reported in a specific category which involved family
12 violence:

<u>CATEGORY OF</u> <u>OFFENSES REPORTED</u>	<u>YEAR</u>	<u>PERCENTAGE OF TOTAL CASES</u> <u>IN CATEGORY WHICH WERE</u> <u>FAMILY VIOLENCE REPORTED</u>
MURDER	1992	45.5%
	1993	27.3%
	1994	60%

Aggravated Assault	1992	9.5%
	1993	24.2%
	1994	28%
Simple Assault	1992	24.7%
	1993	41.9%
	1994	46%
Sex Offenses	1992	45.7%
	1993	47.4%
	1994	49%
Disorderly Conduct	1992	14.3%
	1993	24.1%
	1994	28%

1 National statistics cited by the Family Violence Prevention
2 Fund (A National Public Policy and Education Institute) indicate
3 that every 7.4 seconds a woman is beaten by her husband. A 1993
4 national poll found that more people (34% of men and women) have
5 directly witnessed an incidence of domestic violence, than muggings
6 and robberies combined nineteen percent (19%); and fourteen percent
7 (14%) of women acknowledged having been violently abused by a
8 husband or boyfriend. Thirty percent (30%) of women murdered in
9 the United States in 1992 were murdered by a husband or boyfriend.

10 According to a 1992 article published in the Juvenile and
11 Family Court Journal entitled "Reducing Family Violence: The Role
12 of the Family Violence Council," pregnancy is an especially
13 hazardous time for women. Thirty percent (30%) of all pregnant
14 women are battered. These women are two times more likely to
15 miscarry and four times more likely to have low birthweight babies
16 than the norm. More babies are born with birth defects as a result
17 of the mother's being battered than a combination of all diseases
18 and illnesses for which pregnant women are now immunized.

19 Family violence perpetuates itself, for a child who is raised

1 in an atmosphere of violence is more likely to become a victim or
2 an abuser. Children who witness abuse are more likely to attempt
3 suicide, to abuse drugs and alcohol, to run away from home, to
4 engage in teenage prostitution and other delinquent behavior, and
5 to commit sexual assault crimes. Other members of the household
6 suffer from family violence; an estimated one million incidents of
7 elder abuse occur annually in the United States.

8 In cases of family violence, the victim may require court
9 assistance to keep the abuser away, or may be asking for help to
10 keep a family safely together; some cases call for stern
11 punishment, while others are best handled by rehabilitative
12 programs. Our courts already labor under a heavy caseload of
13 family violence cases, but statistics show that only a small
14 percentage of these offenses are ever reported, especially if
15 sexual conduct is involved. The Federal Bureau of Investigation
16 reports that domestic violence is under-reported by a factor which
17 is greater than ten to one, that is, for every one case which is
18 reported a minimum of ten cases go unreported. Family violence
19 exacts a heavy toll, both in suffering and dollars.

20 Some victims are afraid to report because they fear that the
21 response of the police or the courts will not be swift enough, or
22 certain enough, to protect them. Other victims fear that their
23 voices will not be heard in court, and that the responses will be
24 either too harsh or too lenient. Of the cases that are reported,
25 many happen without independent witnesses, or involve conduct which
26 is deserving of being against the law, but does not fit properly
27 within the definitions of any of our existing criminal codes. Even

1 though statistics show that early intervention and the fact of an
2 arrest can help prevent future acts of violence, our current laws
3 do not give enough support to the police and the prosecutor who
4 often must take action under difficult circumstances. Our current
5 laws also do not give enough support to those victims who are
6 requesting enforced rehabilitation of the offender rather than
7 traditional penal sanctions.

8 It is the intention of the Legislature in enacting this
9 Chapter:

10 1. To promote the protection and safety of all victims
11 of family violence in a fair, prompt, and effective manner, and to
12 prevent future violence in all families;

13 2. To promote early intervention in situations of
14 family violence by giving clear authorization to peace officers to
15 arrest offenders when there is reasonable cause, and to assist the
16 prosecution of these cases by defining a criminal violation, family
17 violence, which may be charged in addition to any other crimes that
18 may have been committed;

19 3. To send a clear message to victims and abusers alike
20 that repeat offenders, and persons who violate court orders that
21 are intended to protect victims, will be swiftly arrested and
22 subjected to prosecution;

23 4. To assist our heavily burdened courts in handling
24 these cases of family violence by giving judges greater authority
25 to divert appropriate defendants into enforced education and
26 treatment programs, as well as providing for mandatory penalties in
27 certain situations; and

1 5. To give victims and families greater access to the
2 courts by providing for pre-trial procedures at which the testimony
3 of the victim may be considered.

4 **Section 2. A new Chapter 30 is hereby added to Title 9, Guam**
5 **Code Annotated to read:**

6 **"CHAPTER 30"**

7 **FAMILY VIOLENCE**

8 **Section 30.10. Definitions. As used in this Chapter:**

9 (a) "Family Violence" means the occurrence of one or
10 more of the following acts by a family or household member, but
11 does not include acts of self-defense and defense of others:

- 12 1. Attempting to cause or causing bodily injury
13 to another family or household member;
- 14 2. Placing a family or household member in fear
15 of bodily injury.

16 (b) "Family or household members" include:

- 17 1. Adults or minors who are current or former
18 spouses;
- 19 2. Adults or minors who live together or who have
20 lived together;
- 21 3. Adults or minors who are dating or who have
22 dated;
- 23 4. Adults or minors who are engaged in or who
24 have engaged in a sexual relationship;
- 25 5. Adults or minors who are related by blood or
26 adoption to the fourth degree of affinity;
- 27 6. Adults or minors who are related or formerly

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

related by marriage;

7. Persons who have a child in common; and

8. Minor children of a person in a relationship that are described in paragraphs (1) through (7).

(c) "Bodily injury" as used in this Chapter, has the same meaning as that provided in Title 9, Guam Code Annotated, Section 16.10(b);

(d) "Attempt" as used in this Chapter, has the same meaning as that provided in Title 9, Guam Code Annotated, Section 13.10;

(e) "Peace Officer" means any person so defined by Title 8, Guam Code Annotated, Section 5.55;

(f) "Victim" means any natural person against whom a crime, as defined under the laws of the Territory of Guam, has been committed or attempted to be committed;

(g) "Witness" means any natural person, (i) having knowledge of the existence or nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for any purpose, or (iii) who has reported any crime to any peace officer, or (iv) who has been served with a subpoena issued under the authority of any court in the Territory of Guam, or (v) who would be believed by any reasonable person to be an individual described in subparagraphs (i) through (iv), inclusive;

(h) "Prosecuting attorney" as used in this Chapter means the Attorney General and those persons employed by the Attorney

1 General's Office whom he specifically designates.

2 Section 30.20. Section 31.60 of Title 9, Guam Code
3 Annotated is hereby repealed. Section 30.20 is hereby enacted to
4 read as follows: Family Violence.

5 (a) Any person who intentionally, knowingly, or
6 recklessly commits an act of family violence, as defined in Section
7 30.10, is guilty of a misdemeanor, or of a third degree felony.

8 (b) Upon a written, noticed motion prior to commencement
9 of trial, the defendant may move that a felony charge filed
10 pursuant to this section be reduced to a misdemeanor. Whether any
11 charge shall proceed as a misdemeanor or a felony rests within the
12 discretion of the court.

13 (c) In determining whether any felony charge filed
14 pursuant to this section should be reduced to a misdemeanor, the
15 court shall consider the following factors, among others:

- 16 1. The extent or seriousness of the victim's
17 injuries;
- 18 2. The defendant's history of violence against
19 the same victim whether charged or uncharged;
- 20 3. The use of a gun or other weapon by the
21 defendant;
- 22 4. The defendant's prior criminal history;
- 23 5. The victim's attitude and conduct regarding
24 the incident;
- 25 6. The involvement of alcohol or other substance,
26 and the defendant's history of substance abuse
27 as reflected in the defendant's criminal

1 history and other sources; and

2 7. The defendant's history of and amenability to
3 counseling.

4 (d) If the court, after hearing, finds substantial
5 evidence to believe that a victim suffered serious bodily injury as
6 defined in Title 9, Guam Code Annotated, Section 16.10(c), no
7 felony charge filed under this section shall be reduced to a
8 misdemeanor unless the court finds that due to unusual
9 circumstances a reduction of the charge is manifestly in the
10 interests of justice.

11 (e) The fact that an alleged criminal act involved
12 family violence as defined in Section 30.10 shall not preclude the
13 prosecuting attorney from charging and prosecuting the defendant
14 for any other violations of law, subject to the provisions set
15 forth in Title 9, Guam Code Annotated, Section 1.22;

16 (f) In any case in which a person is convicted of
17 violating this section and probation is granted, the court shall
18 require participation in an education and treatment program as a
19 condition of probation unless, considering all the facts and the
20 circumstances, the court finds participation in an education and
21 treatment program inappropriate for the defendant.

22 (g) If probation is granted, or the imposition of a
23 sentence is suspended, for any person convicted under subsection
24 (a) who previously has been convicted under subdivision (a) for an
25 offense that occurred within seven (7) years of the offense of the
26 second conviction, it shall be a condition thereof that he or she
27 be punished by imprisonment for not less than ten (10) days, and

1 that he or she participate in for no less than one (1) year, and
2 successfully complete an education and treatment program, as
3 designated by the court. However, the court, upon a showing of
4 good cause, may find that the minimum imprisonment, or the
5 participation in an education and treatment program, or both the
6 minimum imprisonment and participation in an education and
7 treatment program, as required by this subsection, shall not be
8 imposed and may grant probation or the suspension of the imposition
9 of a sentence.

10 (h) If probation is granted or the imposition of a
11 sentence is suspended, for any person convicted under subsection
12 (a) who previously has been convicted of two (2) or more violations
13 of subsection (a) for offenses that occurred within seven (7) years
14 of the most recent conviction, it shall be a condition thereof that
15 he or she be punished by imprisonment for not less than thirty (30)
16 days and that he or she participate in, for not less than one (1)
17 year, and successfully complete, an education and treatment program
18 as designated by the court. However, the court, upon a showing of
19 good cause, may find that the minimum imprisonment, or the
20 participation in an education and treatment program, or both the
21 minimum imprisonment and participation in an education and
22 treatment program, as required by this subsection, shall not be
23 imposed and may grant probation or the suspension of the imposition
24 of a sentence.

25 **Section 30.30. Powers and duties of peace officers to**
26 **arrest for crimes involving family violence; determination of**
27 **primary aggressor; required report.**

1 (a) If a peace officer has reasonable cause to believe
2 that a person has committed a felony or misdemeanor involving
3 family violence, the peace officer shall presume that arresting and
4 charging the person is the appropriate response.

5 (b) If a peace officer receives complaints of family
6 violence from two or more opposing persons, the officer shall
7 evaluate each complaint separately to determine who was the primary
8 aggressor. If the officer determines that one person was the
9 primary aggressor, the officer need not arrest the other person
10 believed to have committed family violence but the peace officer
11 shall document to the best of his or her ability the evidence
12 concerning the actions of each participant in the incident.

13 (c) In determining whether a person is the primary
14 aggressor the officer shall consider:

- 15 1. Prior complaints of family violence;
- 16 2. The relative severity of the injuries
17 inflicted on each person;
- 18 3. The likelihood of future injury to each
19 person;
- 20 4. Whether one of the persons acted in self-
21 defense;
- 22 5. The use or threatened use of a weapon; and
- 23 6. The use or threatened use of physical force.

24 (d) A peace officer shall not:

- 25 1. Threaten, suggest, or otherwise indicate the
26 possible arrest of all parties to discourage
27 requests for intervention by peace officers by

1 any party; or,

2 2. Base the decision to arrest or not to arrest
3 on:

4 (i) The specific consent or request of the
5 victim; or,

6 (ii) The officer's perception of the
7 willingness of a victim or witness to
8 the family violence to testify or
9 otherwise participate in a judicial
10 proceeding.

11 (e) In addition to any other report required, a peace
12 officer who does not make an arrest after investigating a complaint
13 of family violence or who arrests two or more persons for a crime
14 involving family violence must submit a written report setting
15 forth the grounds for not arresting or for arresting both parties.

16 **Section 30.40. Violation of a Court Order.**

17 (a) Any knowing violation of any of the following court
18 orders shall be a misdemeanor punishable by a fine of not more than
19 One Thousand Dollars (\$1,000.00), or by imprisonment for not more
20 than one (1) year, or both such fine and imprisonment:

21 1. An order enjoining a person from threatening
22 to commit or committing acts of family
23 violence against, or from harassing, annoying,
24 or molesting, a family or household member, or
25 any person named in the order;

26 2. An order removing or excluding a person from
27 the family dwelling or from the dwelling of

1 another, or from any habitable property as
2 defined in Title 9, Guam Code Annotated,
3 Section 34.10(b);

4 3. An order requiring a person to stay away from
5 the residence, dwelling, school, daycare
6 center, place of employment, or any other
7 specified place, or from a specified person,
8 within 500 feet of the specified place or
9 specified person;

10 4. An order prohibiting a person from possessing
11 a firearm or other weapon specified by the
12 court; or

13 5. An order in a criminal case prohibiting the
14 defendant from harassing, annoying,
15 telephoning, contacting, or otherwise
16 communicating with a victim or specified
17 witness, either directly or indirectly.

18 (b) In the event of a conviction for a violation of
19 subsection (a) which results in bodily injury as defined in
20 Title 9, Guam Code Annotated, Section 16.10(b), the defendant shall
21 be imprisoned for at least forty-eight (48) hours.

22 (c) In the event of a conviction for a violation of
23 subsection (b), occurring within one (1) year of a conviction of
24 either subsection (a) or (b), committed against the same victim,
25 the defendant shall be imprisoned for no less than thirty (30)
26 days.

27 (d) When a peace officer has reasonable cause to believe

1 that a person has violated one of the orders of the court specified
2 in subsection (a) and verifies the existence of the order, the peace
3 officer shall presume that arresting and charging the person is the
4 appropriate response.

5 (e) An admission by the defendant that he or she had
6 knowledge of the court order shall be admissible in court
7 notwithstanding the **corpus delicti** rule.

8 **Section 30.50. Authority of peace officer to seize**
9 **weapons.**

10 For a crime involving family violence, a peace officer:

11 (a) Shall, incident to an arrest, seize all weapons that
12 are alleged to have been involved or threatened to be used in the
13 commission of a crime.

14 (b) May seize a weapon that is in the plain view of the
15 officer or was discovered pursuant to a consensual search, as
16 necessary for the protection of the officer or other persons.

17 **Section 30.60. Disclosure of Family Violence Shelter.**

18 (a) Any person who knowingly publishes, disseminates, or
19 otherwise discloses the location of any family violence shelter or
20 any place designated as a family violence shelter with the intent
21 to harass, annoy, harm, or injure in any way another person, or to
22 thwart or interfere in any manner with the orderly administration
23 or operation of the shelter, is guilty of a misdemeanor.

24 (b) For purposes of this section, "family violence
25 shelter" means a confidential location which provides emergency
26 services on a 24-hour basis for victims of family violence, and
27 their families.

1 **Section 30.70. Spousal privileges inapplicable in**
2 **criminal proceedings involving family violence.**

3 Notwithstanding any other provision of law, the following
4 evidentiary privileges do not apply in any criminal proceeding in
5 which a spouse or other family or household member is the victim of
6 an alleged crime involving family violence perpetrated by the other
7 spouse:

8 (a) The privilege not to testify against one's spouse.

9 (b) The privilege for confidential marital
10 communication.

11 **Section 30.80. Diversion Eligibility.**

12 Notwithstanding any other provision of law, and upon the
13 determination of the judge, this section shall apply whenever a
14 case is before the court upon an accusatory pleading for any
15 criminal act against a family or household member as defined in
16 Section 30.10(b).

17 (a) The following persons are ineligible for the
18 diversion process:

19 1. A defendant who has a felony conviction for
20 any offense involving violence within seven
21 (7) years prior to the alleged commission of
22 the charged offense;

23 2. A defendant who has been diverted pursuant to
24 this section within five (5) years prior to
25 the commission of the charged offense whether
26 or not the prior diversion resulted in
27 expungement;

1 3. A defendant who has been sentenced for a
2 violation of Section 30.40 within one (1) year
3 prior to the alleged commission of the charged
4 offense; or

5 4. A defendant whose current charge involves
6 serious bodily injury as defined in Title 9,
7 Guam Code Annotated, Section 16.10(c), or
8 criminal sexual conduct involving sexual
9 penetration as defined in Title 9, Guam Code
10 Annotated, Section 25.10(a)(9), unless the
11 court finds that due to unusual circumstances
12 diversion of the criminal proceedings is
13 manifestly in the interests of justice.

14 (b) The fact that a defendant is not made ineligible by
15 subsection 30.80(a) does not automatically entitle a defendant to
16 the diversion process.

17 (c) The prosecuting attorney shall determine whether the
18 defendant is ineligible for diversion by reason of any of the
19 factors set forth in subsection 30.80(a). If the prosecutor finds
20 that the person is not ineligible, and will agree to diversion, the
21 prosecutor shall notify the defendant.

22 (d) If the prosecutor finds that the defendant is
23 ineligible, or if the prosecutor will not agree to diversion
24 although the defendant is not excluded by reason of subsection
25 30.80(a), the prosecutor shall notify the defendant.

26 (e) Any defendant who is not specifically ineligible for
27 the diversion process pursuant to subsection 30.80(a) may apply to

1 the court, by noticed motion for an order granting diversion. The
2 prosecuting attorney may oppose this application.

3 **Section 30.80.1. Diversion Hearing.**

4 (a) Upon noticed motion, the court shall hold a hearing
5 and, after consideration of any and all information the court
6 believes to be relevant to its decision, the court shall determine
7 if the defendant consents to further proceedings under this section
8 and waives his or her right to a speedy trial, and if the defendant
9 should be diverted from the criminal proceedings and referred for
10 an education and treatment program directed specifically to the
11 violent conduct of the defendant. The court, in determining the
12 defendant's eligibility for diversion, shall consider the nature
13 and extent of the injury inflicted upon the victim, any prior
14 incidents of family violence by the defendant, and any factors
15 which would adversely influence the likelihood of successful
16 completion of the diversion process. If the court does not deem
17 the defendant a person who would be benefited by diversion, or if
18 the defendant does not consent to participate, the criminal
19 proceedings shall continue as in any other case. If the court
20 orders a defendant to be diverted, the court shall make inquiry
21 into the financial condition of the defendant and upon a finding
22 that the defendant is able in whole or part to pay the expense of
23 such counseling the court may order him or her to pay for all or
24 part of such expense.

25 Nothing in this subsection shall prohibit the placement
26 of a defendant in another appropriate counseling program if the
27 court determines that there is no available education and treatment

1 program.

2 (b) At such time that the defendant's case is diverted,
3 any bail bond or undertaking, or deposit in lieu thereof, on file
4 by or on behalf of him or her shall be exonerated, and the court
5 shall enter an order so directing.

6 (c) The period during which further criminal proceedings
7 against a person may be diverted pursuant to this section shall be
8 no less than one (1) year, and no more than three (3) years if a
9 misdemeanor is charged, and no more than five (5) years if a felony
10 is charged;

11 (d) The court shall set forth in writing or state on the
12 record its reason for granting or denying diversion. The court's
13 decision in such a matter shall be final and shall not constitute
14 an appealable order.

15 **Section 30.80.2. Reinstitution of Criminal Proceedings;**
16 **Dismissal.** If it appears to the prosecuting attorney, the court,
17 or the probation department that the divertee is performing
18 unsatisfactorily in the assigned program, or that the divertee is
19 not benefiting from education and treatment programs, or that he or
20 she has been convicted of any offense involving violence, after
21 notice to the divertee, and upon motion by the prosecuting attorney
22 or on the court's own motion, the court shall hold a hearing to
23 determine whether the criminal proceedings should be reinstated.
24 If the court finds by substantial evidence that the divertee is not
25 performing satisfactorily in the assigned program, or that the
26 divertee is not benefiting from diversion, or the court finds that
27 the divertee has been convicted of a crime as indicated above, the

1 criminal case shall be referred back to the court for resumption of
2 the criminal proceedings. If the divertee has performed
3 satisfactorily during the period of diversion, at the end of the
4 period of diversion, the criminal charges shall be dismissed upon
5 motion or application of the defendant.

6 **Section 30.80.3. Use of Arrest Record Following**
7 **Successful Completion of Diversion Program.** Any records filed with
8 the Guam Police Department and the Office of the Attorney General,
9 Prosecution Division, shall indicate the disposition in those cases
10 diverted pursuant to this section. Upon successful completion of
11 a diversion program the arrest upon which the diversion was based
12 shall be expunged as provided by Title 8, Guam Code Annotated,
13 Chapter 11. The divertee may indicate in response to any question
14 concerning his or her prior criminal record that he or she was not
15 arrested or diverted for such offense. A record pertaining to an
16 arrest resulting in successful completion of the diversion process
17 shall not, without the divertee's consent, be used in any way which
18 could result in the denial of any employment, benefit, license, or
19 certificate.

20 **Section 30.80.4. Admissibility of Statement or**
21 **Information Procured Therefrom Made During Determination of**
22 **Defendant's Eligibility For Diversion.** Any statement or any
23 information procured therefrom, with respect to the specific
24 offense with which the defendant is charged, which is made to any
25 probation officer or counselor during the process of determining
26 the defendant's eligibility for diversion or subsequent to the
27 granting of diversion, shall be in admissible.