

Committee
On
Judiciary and Criminal Justice
REPORT
On
Substitute Bill 244

An act to add a new chapter 18 to Title 16, Guam Code Annotated, to define driving offenses involving alcohol and controlled substances and to provide for the suspension or revocation of drivers' licenses for such offenses and to define the probation for such offenses and to provide for pedestrian and vehicle safety on the highways and roadways of Guam.

Preface

The public hearing on Bill 244 was conducted by the Committee on Judiciary and Criminal Justice on Wednesday, February 24, 1993 in the Legislative Public Hearing Room. The hearing was called to order by Committee Chairwoman Pilar C. Lujan. Also present was Senator Doris F. Brooks, author of a measure which similarly calls for strengthening laws on driving under the influence.

The measure was reported out with a recommendation to pass on April 6, 1993. At a subsequent date, the measure was placed on the Session Agenda and discussed. The Legislature recessed and discussions took place between committee members and other senators to modify the measure.

On June 1, 1991, the measure was officially referred back to the Committee on Judiciary and Criminal Justice for further review and discussion.

The Committee Chairwoman conducted meetings on June 2 and 3 on the measure which included Committee members Speaker Joe T. San Agustin, Don Parkinson, Herminina Dierking, Madeleine Bordallo, Ben Pangelinan, Tommy Tanaka, Antonio Unpingco. Senator Doris Brooks also attended.

Overview

During the 20th Guam Legislature, legislative efforts focused on passage of a law to clamp down on drunk drivers. Since then, modifications have been sought to put in place an implied consent and forfeiture provision for the purpose of strengthening the existing law.

Subsequent to introduction of the measure, Committee Chairwoman Pilar C. Lujan discovered that the territory has no vehicular homicide provision. The lack of such a provision currently allows convicted perpetrators to serve a maximum of only three years imprisonment under a negligence statute if a motorist or pedestrian is killed by a drunk driver. A vehicular homicide provision would subject offenders to a second degree felony which could carry a longer term of imprisonment defined by the Legislature, instead of the existing negligence sentence which carries a maximum of three years. Under existing sentencing statutes, the Legislature can modify, as it sees fit, terms of imprisonment and fines to ensure that punishment fits the crime.

According to Prosecution Division officials, there were 988 driving under the influence cases filed with 417 convictions in 1992.

As a result of meetings last year between the Committee on Judiciary and Criminal Justice, the Department of Law, the Guam Police Department, and the Office of Highway Safety, Bill 244 was crafted. Called the Safe Streets Act, the measure also provides for motorist and pedestrian safety.

Committee Findings and Testimony

Chief Prosecutor Frances Tydingco-Gatewood and Assistant Attorney General Amber Malarney appeared before the Committee expressing support for the measure. Aside from noting necessary technical modifications to address typographical errors, Chief Prosecutor Tydingco-Gatewood suggested that language be inserted in the measure to provide coordinated efforts to establish automatic license revocation procedures. (ATTACHMENT I)

The Chief Prosecutor recommended that the police, prosecutors, RevTax motor vehicle representatives, and court officials be tasked to develop license suspension and revocations procedures.

Deputy Assistant Attorney General Karen Keeler noted that the establishment of an administrative process would be effective in handling license suspension and revocation proceedings.

Citing statistics as data relating to drunk driving and license revocation, high school student Ernest Ochaco appeared on behalf of the Dededo Drug Free Organization in support of the measure. He testified that "this will not only keep the offenders off the streets, but it should also send a message to irresponsible people who drink and drive."

Noting the overlap of areas between the measure she authored and Bill 244, Senator Brooks recommended becoming a sponsor of Bill 244 and substituting the language of the measure by incorporating some provisions from her measure.

On concerns with seizure and forfeiture, the Chief Prosecutor noted that language should be added to protect the rights of joint ownership.

The Chief Prosecutor and Office of Highway Safety representative Terry Santos expressed support for the redefinition of blood alcohol content from .10 to .08 and noted that 35 of 50 jurisdictions have already adopted such definition.

Mr. Jack Rice also appeared before the Committee and testified in support of the measure. Additionally, he suggested raising fines for moving violations and establishing a driver's education fund. (ATTACHMENT II)

Mr. Pedro D. Paulino, a concerned citizen and parent, also testified in support of the measure. (ATTACHMENT III)

Ms. Mary Kolski, a representative of the Department of Mental Health and Substance Abuse, noted the lack of education and treatment provisions in the measure. Ms. Kolski noted that the Department has the resources available to conduct such a program.

The committee also received written testimony in favor of the measure from the family of the late Vicky Flores, a running enthusiast who was killed last year by a drunk motorist. (ATTACHMENT IV)

Mr. Robert L. Wade, President of the Guam Running Club submitted written testimony in support of the measure and suggested that non-governmental organizations such as the Guam Running and Guam Bicycle clubs be included in discussions regarding planning for highway safety. (ATTACHMENT V)

Additionally, Superior Court of Guam Judicial Hearings Referee Robert Cruz submitted testimony in support of the measures and recommended that license suspension and revocation proceedings be handled by the executive branch instead of through the courts given the existing caseloads. (ATTACHMENT VI)

Guam Police Chief Adolf P. Sgambelluri also submitted testimony in support of the measure because it is needed. (ATTACHMENT VII)

The Police Chief noted the measure will reduce drunk driving and related accident. Additionally, according to the Chief, the measure will serve as a deterrent to repeat offenders by allowing for stiffer sentences and seizure and forfeiture of vehicles.

Attorney Joaquin Arriola, Jr. submitted testimony in favor of the measure's goals but recommended tailoring around California's drunk driving laws.

(ATTACHMENT VIII)

Guam Telephone Authority General Manager James Underwood submitted testimony in support of the measure's provision calling for the study and placement of emergency telephone call boxes along island roadways. (ATTACHMENT IX)

During the June 2 and 3 meetings, committee members discussed the .08% blood alcohol definition and subsequently voted to retain the definition.

Attorneys from the Department of Law and Guam Police Department assisted in the organizational development of the measure on June 3 and June 4.

Committee Recommendations

The Committee took under advisement the suggestions made to them by those who either presented or submitted testimony on Bill 244.

The Committee, after consultation with local attorneys, recommends reorganization of the measure into three articles:

1. Offenses involving alcohol and controlled substances---e.g. new penalties
2. Implied consent procedures and suspension/revocation of licenses
3. Probation and miscellaneous provisions

On specific highlights of the bill, the Committee notes the following:

a) based on national trends, reducing blood alcohol content from .10% to .08% because of the increasing incidence of drunk driving and scientific data illustrating impairment at lower levels. The Committee therefore recommends retention of the .08% blood alcohol content definition. Alongside of that, both the Office of Highway Safety and Guam Police Department stand to receive additional federal funds for safety and law enforcement if adoption of a lower blood alcohol content definition is adopted.

b) vehicular homicide provisions to allow for stiffer sentences on those who kill others have been requested by the Office of the Prosecutor. Currently, the maximum sentence for such driving involving fatalities carries a maximum term of up to 3 years imprisonment. The Committee recommends such crime be categorized as a second or third degree felony with longer prison sentences.

c) implied consent provisions to curb the incidence of drunk driving have been deemed necessary to curtail the problem. Previously, the drunk driving bill authored by Senators Santos and Lujan in the 20th Guam Legislature contained an implied consent which was deleted. The lack of such authority makes the existing law fangless. The Committee notes that the implied consent provisions contained in this Act were patterned from Hawaii and California.

Administrative review through the Department of Revenue and Taxation is recommended by the Committee.

d) the Committee recognizes that such new procedures may have an impact on the operations and resources of the departments tasked with implementing this Act and recommends that cost estimates for additional resources be forwarded to the Legislature. Moreover, to provide further safety for pedestrians and motorists on Guam's highways, the Committee recommends study of highways and roadways, including transfer of funds to erect safety measures.

The Committee recommends passage of Substitute Bill 244 (See Substitute Bill 244).

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TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 244

As amended by the Committee on
Judiciary and Criminal Justice

Introduced by:

P. C. Lujan
F. R. Santos
D. F. Brooks
D. Parkinson

AN ACT TO ADD A NEW CHAPTER 18 TO TITLE 16, GUAM CODE ANNOTATED, TO DEFINE DRIVING OFFENSES INVOLVING ALCOHOL AND CONTROLLED SUBSTANCES AND TO PROVIDE FOR THE SUSPENSION OR REVOCATION OF DRIVERS' LICENSES FOR SUCH OFFENSES AND TO DEFINE THE PROBATION FOR SUCH OFFENSES.

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

2 Section 1. Legislative statement. In recent years, traffic accidents involving
3 motorists driving under the influence of alcohol have risen despite previous
4 legislative efforts to curb the problem. The legislature finds that a revised implied
5 consent law and tougher penalties are needed. This act shall be called the "Safe Streets
6 Act."

7 Section 2. A new Chapter 18 is hereby added to Title 16, Guam Code Annotated,
8 to read:

9 "CHAPTER 18

10 ARTICLE 1

11 OFFENSES INVOLVING ALCOHOL AND CONTROLLED SUBSTANCES

12 §18101. Definitions. As used in this Chapter:

1 (a) **Driving under the influence ("DUI") or while intoxicated** means any person
2 driving a vehicle under the influence of an alcoholic beverage or a controlled
3 substance or a combination thereof, when as a result of consuming such alcoholic
4 beverage or controlled substance or the combination thereof, his or her physical or
5 mental abilities are impaired to such a degree that he or she no longer has the ability to
6 drive a vehicle with the caution characteristics of a sober person of ordinary prudence,
7 under the same or similar circumstances., and includes any person operating or in
8 actual physical control of a motor vehicle who has eight one-hundredths of one percent
9 (0.08%) or more, by weight, of alcohol in his or her blood.

10 (b) **Percent of alcohol by weight** shall be based upon grams of alcohol per one
11 hundred (100) milliliters of blood.

12 (c) **Prior offense of driving under the influence** includes a conviction based on
13 drunk driving laws in effect prior to enactment of this Article.

14 (d) **Controlled substances** means those so defined by Chapter 67, Title 9, Guam
15 Code Annotated—the Uniform Controlled Dangerous Substances Act.

16 (e) **Vehicular homicide** means a person who does any act forbidden by law in
17 the driving of a vehicle or who negligently drives a vehicle, which act or negligence
18 proximately causes death to any person other than the driver.

19 (f) **Vehicular homicide while intoxicated** means a person, while driving a
20 vehicle under the influence does any act forbidden by law in the driving of the vehicle
21 or if he or she negligently drives a vehicle, which act or negligence proximately causes
22 death to any person other than the driver.

23 (g) **Negligence** means the failure to use the ordinary or reasonable care which a
24 person of ordinary prudence would use in order to avoid injury to himself or others
25 under similar circumstances.

26 (h) **Reasonable cause** means such a state of facts as would lead a person of
27 ordinary care and prudence to believe and conscientiously entertain honest and strong

1 suspicion that the person driving or in control of a vehicle is under the influence of
2 alcohol or of a controlled substance or of a combination.

3 **§18102. Influence of alcohol and controlled substances; causing bodily injury to**
4 **person other than driver; alcoholic content in blood; proof.**

5 (a) It is unlawful for any person, while under the influence of an alcohol or any
6 controlled substance, or under the combined influence of an alcoholic beverage and any
7 controlled substance, to operate a motor vehicle.

8 (b) It is unlawful for any person, while having eight one-hundredths of one
9 percent (0.08%) or more, by weight, of alcohol in his or her blood to operate or be in
10 physical control of a vehicle.

11 (c) It is unlawful for any person, while under the influence of an alcohol or any
12 controlled substance, or under the combined influence of an alcohol and any controlled
13 substance, to drive a vehicle and, when so driving, do any act forbidden by law or
14 neglect any duty imposed by law in the driving of the vehicle or who negligently drives
15 a vehicle, which act or neglect or negligence proximately causes bodily injury to any
16 person other than the driver.

17 (d) It is unlawful for any person, while having eight one-hundredths of one
18 percent (0.08%) or more, by weight, of alcohol in his or her blood to drive a vehicle and,
19 when so driving, do any act forbidden by law or neglect any duty imposed by law in the
20 driving of the vehicle, which act or neglect proximately causes bodily injury to any
21 person other than the driver.

22 In any prosecution under this subsection, it is a rebuttable presumption that the
23 person with* eight one-hundredths of one percent (0.08%) or more, by weight, of
24 alcohol in his or her blood at the time of operating or in actual physical control of a
25 motor vehicle is under the influence of alcohol if the person had eight one-hundredths
26 of one percent (0.08%) or more, by weight, of alcohol in his or her blood at the time of
27 the performance of a blood or breath test within three (3) hours after the driving.

1 (e) It is unlawful for any person, while under the influence of an alcohol or any
2 controlled substance, or under the combined influence of an alcoholic beverage and any
3 controlled substance, to operate or drive a motor vehicle.

4 (f) In proving the person neglected any duty imposed by law in the driving of
5 the vehicle, it is not necessary to prove that any specific section of this title was
6 violated.

7 **§18103. Driving while intoxicated; presumptions.**

8 (a) Upon the trial of any criminal action, or preliminary proceeding in a
9 criminal action, arising out of acts alleged to have been committed by any person while
10 driving or being in actual physical control of a vehicle while under the influence of an
11 alcohol in violation of subsections (a) or (b) of §18102, the amount of alcohol in the
12 person's blood at the time of the test as shown by an analysis of that person's blood or
13 breath shall give rise to the following presumptions affecting the burden of proof:

14 (1) If there was at that time less than eight one-hundredths of one
15 percent (0.08%) by weight of alcohol in the person's blood, that fact shall not give
16 rise to any presumption that the person was or was not under the influence of an
17 alcoholic beverage, but the fact may be considered with other competent
18 evidence in determining whether the person was under the influence of an
19 alcohol at the time of the alleged offense.

20 (2) If there was at that time eight one-hundredths of one percent (0.08%)
21 or more by weight of alcohol in the person's blood, it shall be presumed that the
22 person was under the influence of an alcoholic beverage at the time of the
23 alleged offense.

24 (b) Before such presumptions are made in cases involving a breath test, the
25 prosecuting attorney must show the following by a preponderance of the evidence:

26 (1) That the instrument used for the test was properly checked and in
27 proper working order at the time of conducting the test;

1 (2) That any chemicals employed in the test were of the correct kind and
2 compounded in the proper proportions;

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

6 (4) That the test was given by a qualified operator and in the proper
7 manner.

8 (d) The provisions of this subsection shall not be construed as limiting the
9 introduction of any other competent evidence bearing upon the question whether the
10 person ingested any alcoholic beverage or was under the influence of an alcohol at the
11 time of the alleged offense.

12 §18104. Prior offenses resulting in conviction of violation of §23405 of Title XXIV
13 of the Government Code; status as prior offense of violation of §18102. For the
14 purposes of this Article, a prior offense which resulted in a conviction of a violation of
15 §23405 of the Government Code is a prior offense of a violation of §18102 and in any
16 other jurisdictions.

17 §18105. Conviction of first violation of §18102 (a) and (b); punishment.

18 (a) If any person is convicted of a first violation of §18102 that person shall be
19 guilty of a misdemeanor and shall be punished by imprisonment in the custody of the
20 Department of Corrections ("DOC") or the Guam Police Department ("GPD") for not
21 less than a mandatory forty-eight (48) hours nor more than one (1) year and a fine of
22 not less than One Thousand Dollars (\$1,000) nor more than Five Thousand Dollars
23 (\$5,000); in addition, the judge may impose any additional penalties, including,
24 requiring the offenders to pay restitution to be made to persons injured or for property
25 damaged.

1 (b) The court may order that any person punished under this section, who is to
2 be punished by imprisonment by DOC or GPD, be imprisoned on days other than days
3 of regular employment of the person, as determined by the court.

4 (c) Any person who has been granted probation under the conditions of Article
5 3, §18301, may, after six (6) months have elapsed since the commencement of
6 participation in the treatment program, petition the court to have the restriction on
7 that person's privilege to operate a motor vehicle removed, and the court may, for
8 good cause shown, order the Department of Revenue and Taxation to remove the
9 restrictions upon a showing that the person has successfully participated in the
10 treatment program and complied with the terms and conditions of probation and has
11 given proof of insurance, and has made a showing to the court there is little likelihood
12 of a repeat offense.

13 (d) The court shall suspend and confiscate and shall notify the Department of
14 Revenue and Taxation of the suspended privileges to operate a motor vehicle of a
15 person punished under this section for six (6) months.

16 **§18106. Second conviction of §18102 (a) and (b); punishment.** If any person is
17 convicted of a violation of §18102 (a) and (b) and the offense occurred within five (5)
18 years of a separate violation of §18102 or §§23405 or 23406 of the Government Code, any
19 combination thereof which resulted in a conviction thereof, that person shall be guilty
20 of a misdemeanor and shall be punished by imprisonment in the custody of DOC or
21 GPD for not less than a mandatory seven (7) days nor more than two (2) years and by a
22 fine of not less than Two Thousand Dollars (\$2,000) nor more than Five Thousand
23 Dollars (\$5,000). The person's privilege to operate a motor vehicle shall be suspended
24 for one (1) year and with no exceptions for occupational driving privileges by the
25 Department of Revenue and Taxation pursuant to §18123 of this Article.

26 **§18107. Conviction of violation of §18102 (a) and (b) within five years after two**
27 **violations of designated sections; punishment.** If any person is convicted of a violation

1 of §18102 (a) and (b) and the offense occurred within five (5) years of two (2) separate
2 violations of §18102 (a) and (b) or of said §§23405 and 23406 of the Government Code, or
3 any combination thereof, which resulted in convictions, that person shall be guilty of a
4 felony of the third degree and shall be punished by imprisonment in the custody of
5 DOC or GPD for not less than a mandatory ninety (90) days and not more than five (5)
6 years and by a fine of not less than Three Thousand Dollars (\$3,000) nor more than Five
7 Thousand Dollars (\$5,000). The person's privilege to operate a motor vehicle shall be
8 revoked by the Department of Revenue and Taxation for a period of not less than Two
9 (2) years.

10 §18108. Conviction of violation of §18102 (a) and (b) within five years of three or
11 more violations of designated sections; punishment. If any person is convicted of a
12 violation of §18102 (a) and (b) and the offense occurred within five (5) years of three (3)
13 or more separate violations of §18102 or of said §§23405 and 23406 of the Government
14 Code or any combination thereof, which resulted in convictions, that person shall be
15 punished by imprisonment in the custody of DOC or GPD for not less than a mandatory
16 one (1) year nor more than six (6) years, and by a fine of not less than Four Thousand
17 Dollars (\$4,000) nor more than Seven Thousand Dollars (\$7,000). The person's
18 privilege to operate a motor vehicle shall be revoked by the Department of Revenue
19 and Taxation pursuant to §18201 of this Code for a period of not less than five (5) years.
20 The court may at its discretion allow credit for therapeutic treatment.

21 §18109. Conviction of violation of §18102 (a) and (b); driving with a child or
22 children. In addition to any other penalty imposed by the court, if any person is
23 convicted of a violation of §18102 or of said §§23405 and 23406 of the Government
24 Code, and the offense included driving with a child or children, under the age of
25 sixteen (16) in the vehicle , or striking a vehicle with a child or children under the age
26 of sixteen (16) in it, such person shall be guilty of a felony of the third degree.

1 **§18110. Vehicular negligence; injury to person other than driver.** In addition to
2 any other penalty imposed by the court, if any person is convicted of a violation of
3 **§18102** and the offense causes bodily injury to any person other than the driver, such
4 person shall be guilty of vehicular negligence which is a felony of the third degree.

5 **§18111. Vehicular homicide; classified.** (a) A person is guilty of vehicular
6 homicide if, while driving a vehicle, he or she does any act forbidden by law in the
7 driving of the vehicle or if he or she negligently drives a vehicle, which act or
8 negligence proximately causes death to any person other than himself or herself. As
9 allowed in §4.45 of Title 9, Guam Code Annotated, in proving that the person did any
10 act forbidden by law, it shall not be necessary to prove that the person possessed a
11 culpable mental state. Vehicular homicide is a felony of the second degree and shall be
12 punishable by imprisonment in the custody of DOC and GPD for up to eight (8) years.

13 (b) A person is guilty of vehicular homicide while intoxicated if, while driving
14 a vehicle in violation of subsections (a) or (b) of **§18102** of this Article, he or she does
15 any act forbidden by law in the operating or driving of the vehicle or if he or she
16 negligently operates or drives a vehicle, which act or negligence proximately causes
17 death to any person other than himself or herself. As allowed in §4.45 of Title 9, Guam
18 Code Annotated, in proving that the person did any act forbidden by law, it shall not be
19 necessary to prove that the person possessed a culpable mental state. Vehicular
20 homicide while intoxicated is a felony of the second degree and shall be punishable by
21 imprisonment in the custody of DOC or GPD for not less than a mandatory five (5)
22 years, and up to fifteen (15) years.

23 **§18112. Impoundment of vehicle of registered owner convicted or charged of**
24 **violation of §18102; prior offenses; considerations; exemption.** The interest of any
25 owner of a motor vehicle which has been used in the commission of a violation of
26 **§18102** for which the owner was convicted, is subject to impoundment as provided in
27 this section. Upon conviction the court may order the vehicle impounded by GPD or

1 its authorized agent at such locations as shall be designated by the Chief of Police at the
2 owner's expense for not less than one (1) day nor more than thirty (30) days. For
3 purposes of section, "owner of a motor vehicle" includes the registered owners, legal
4 owner, or the lessee of said vehicle at the time of the offense.

5 If the offense occurred within five (5) years of a prior offense which resulted in
6 conviction of a violation of §18102 or of §§23405 and 23406 of the Government Code,
7 the prior conviction shall also be charged in the accusatory pleading and if admitted or
8 found to be true by the jury upon a jury trial or by the court upon a court trial; the
9 court, except in an unusual case where the interests of justice would best be served by
10 not ordering impoundment, shall order the vehicle impounded at the owner's expense
11 for not less than thirty (30) or more than ninety (90) days.

12 For purposes of this section the court may consider in the interests of justice
13 factors such as whether impoundment of the vehicle would result in a loss of
14 employment of the offender or the offender's family, impair the ability of the offender
15 or the offender's family to attend school or obtain medical care, result in the loss of the
16 vehicle because of inability to pay impoundment fees, or unfairly infringe upon
17 community property rights or any other facts the court finds relevant. When no
18 impoundment is ordered in an unusual case pursuant to this section, the court shall
19 specify on the record and shall enter in the minutes the circumstances indicating that
20 the interests of justice would best be served by such a disposition.

21 **§18113. Charging a violation of §18102 after convictions of violations of §18102;**
22 **effect of prior convictions on sentencing and driving privilege.**

23 (a) In any case charging a violation of §18102 and the offense occurred within
24 five (5) years of one (1) or more separate violations of §18102 or of §§23405 and 23406 of
25 the Government Code of Guam, which resulted in convictions and resulted in one (1)
26 or more convictions, or any combination, or all, of those provisions, the court shall not
27 strike any separate conviction of those offenses for purposes of sentencing in order to

1 avoid imposing as part of the sentence or term of probation, the minimum time of
2 imprisonment and the minimum fine, as provided in this chapter, or for purposes of
3 avoiding revocation, suspension, or restriction of the privilege to operate a motor
4 vehicle, as provided in this title.

5 (b) In any case charging a violation of §18102, the court shall obtain a copy of
6 the driving record of the person charged from the Department of Revenue and
7 Taxation and may obtain any records or any other source to determine if one (1) or
8 more convictions, that resulted in one (1) or more convictions have occurred within
9 five (5) years of the charged offense.

10 (c) If any separate convictions of violations of §18102 or of said §§23405 or 23406
11 of the Government Code, are reported to have occurred within five (5) years of the
12 charged offense, the court shall notify each court where any of the separate convictions
13 occurred for the purpose of enforcing terms and conditions of probation pursuant to
14 Article 3.

15 (d) The person charged with violating §18102 must under oath acknowledge
16 that the driving record before the court is a true and accurate record of all the driving
17 offenses involving alcohol or controlled substances.

18 **§18114. use of Controlled Substance as defense to violations** The fact
19 that any person charged with driving under the influence of alcohol or any controlled
20 substance or a combination thereof, in violation of §18102, is or has been entitled to use
21 the controlled substance of this territory shall not constitute a defense against any
22 violation of the sections.

23 **§18115 Participation in driver improvement or treatment programs; no**
24 **suspension or stay of proceedings prior to acquittal or conviction of violations of**
25 **§18102; effect after conviction and sentencing.**

26 (a) In any case in which a person is charged with a violation of §18102, prior to
27 acquittal or conviction, the court shall not suspend or stay the proceedings for the

1 purpose of allowing the accused person to attend or participate, nor shall the court
2 consider dismissal of or entertain a motion to dismiss the proceedings because the
3 accused person attends or participates during that suspension, in any one (1) or more
4 education, training, or treatment programs, including, but not limited to, a driving
5 improvement program, a treatment program for persons who are habitual users of
6 alcohol or other alcoholism program, a program designed to offer alcohol service to
7 problem drinkers, an alcohol or drug education program, or a treatment program for
8 persons who are habitual users of controlled substances or other drug-related program.

9 (b) This section shall not apply to any attendance or participation in any
10 education, training, or treatment programs after conviction and sentencing, including
11 attendance or participation in any of those programs as a condition of probation granted
12 after conviction when permitted pursuant to this article.

13 **§18116. Restriction on privilege to operate motor vehicles; markings on licenses**
14 **and records; removal of restriction; notice and recordation of probation.**

15 (a) If a person's privilege to operate a motor vehicle is restricted by a court
16 pursuant to this article, the court shall issue an occupational driving permit in a form
17 designed by the Division of Motor Vehicle, Department of Revenue and Taxation. The
18 permit shall be displayed in the rear window of any vehicle driven by the motorist
19 granted limited driving privileges. The court shall promptly notify the Department of
20 Revenue and Taxation (the "Department") of the terms of the restriction in a manner
21 prescribed by the Department. The clerk of court shall punch a hole in the lower right
22 hand side of the person's license, indicating a restriction. The Department shall place
23 that restriction on the person's records in the Department and enter the restriction on
24 any license subsequently issued by the Department to that person during the period of
25 the restriction. If the person removes the permit or fails to produce the punched
26 license, he or she shall be guilty of a felony of the third degree.

1 (b) The cost of permit shall be borne by the person whose privilege to operate a
2 motor vehicle is restricted.

3 (c) If the court removes a restriction before the end of the previously specified
4 term pursuant to §18109, the court shall so mark the person's driver's license in a
5 manner prescribed by the Department and promptly notify the Department of the
6 removal of the restriction.

7 (d) If a person is placed on probation pursuant to this Article, the court shall
8 promptly notify the Department of the probation and probationary term and conditions
9 in a manner prescribed by the Department. The Department shall place the fact of
10 probation and the probationary term and conditions on the person's record in the
11 Department.

12 (e) If a person's privilege to operate a motor vehicle is required or ordered to be
13 suspended or revoked by the Department pursuant to other provisions of this title
14 upon the conviction of an offense of this article, at the time for sentencing, that person
15 shall be present in court and each and each operator's license of that person shall be
16 surrendered to the court where the Clerk of Court shall punch a hole in such license.

17 (f) Upon such person completing his or her sentence for such conviction, the
18 court shall transmit the license or licenses to the Department for reissuance if such
19 person passes the drivers license examination given by the Department.

20 §18117. Separate conviction; challenge to constitutional validity; use in judicial
21 or administrative proceedings. Only one (1) challenge shall be permitted to the
22 constitutionality of a separate conviction of a violation of §18102, which was
23 entered in a separate proceeding to declare a separate judgment of conviction
24 constitutionally invalid. A determination by the court that the separate conviction is
25 constitutional precludes any subsequent attack on constitutional grounds in a
26 subsequent prosecution in which the same separate conviction is charged. Any
27 determination that a separate conviction is unconstitutional precludes any allegation

1 or use of that separate conviction in any judicial or administrative proceeding, and the
2 Department shall strike that separate conviction from its records. Pursuant to §18123,
3 the court shall report to the Department any determination upholding a conviction on
4 constitutional grounds and any determination that a conviction is unconstitutional.

5 This §18117 shall not preclude a subsequent challenge to a conviction if, at a later
6 time, a subsequent statute or appellate court decision having retroactive application
7 affords any new basis to challenge the constitutionality of the conviction.

8 §18118. Dismissal of allegation of violation of §18102; substitution of lesser
9 offense or dismissal or striking of separate conviction; reasons by court and
10 prosecution. When an allegation of a violation of §18102 is dismissed by the court, an
11 allegation of a different or lesser offense is substituted for an allegation of a violation of
12 §18102, or an allegation of a separate conviction is dismissed or stricken, the court shall
13 specify on the record its reason or reasons for the order. The court shall also specify on
14 the record whether the dismissal, substitution, or striking was requested by the
15 prosecution and whether the prosecution concurred in or opposed the dismissal,
16 substitution, or striking.

17 When the prosecution makes a motion for a dismissal or substitution, or for the
18 striking of a separate conviction, the prosecution shall submit a written statement
19 which shall become part of the court records and which gives the specific reasons for
20 the motion. The reasons shall include, but need not be limited to, problems of proof,
21 the interests of justice, why another offense is more properly charged, if applicable, and
22 any other pertinent reasons. If the reasons include the "interests of justice", the written
23 statement shall specify all of the factors which contributed to this conclusion.

24 §18119. Drinking while driving a motor vehicle upon any highway. No person
25 shall drink any alcoholic beverage or consume a controlled substance while driving a
26 motor vehicle upon any highway. The penalties for violation of this §18119 shall be
27 the same as the first offense in §18105.

1 **§18120. Drinking in motor vehicle upon highway.** Any person who drinks any
2 alcoholic beverage or consumes a controlled substance while in a motor vehicle upon a
3 highway shall be guilty of a misdemeanor.

4 **§18121. Possession of opened container in a motor vehicle.**—Any person who has
5 in his or her possession on his or her person, while in a motor vehicle upon a
6 highway, any bottle, can, or other receptacle, containing any alcoholic beverage which
7 has been opened, or a seal broken, or the contents of which have been partially
8 removed shall be guilty of a misdemeanor.

9 **§18122. Storage of opened container.** A person shall be guilty of a misdemeanor
10 if he or she is the registered owner of any motor vehicle, or the driver if the registered
11 owner is not then present in the vehicle, to keep in a motor vehicle, when the vehicle
12 is upon any highway, any bottle, can, or other receptacle containing any alcoholic
13 beverage which has been opened, or a seal broken, or the contents of which have been
14 partially removed, unless the container is kept in the trunk of the vehicle, or kept in
15 some other area of the vehicle not normally occupied by the driver or passengers, if the
16 vehicle is not equipped with a trunk. A utility compartment or glove compartment
17 shall be deemed to be within the area occupied by the driver and passengers. This
18 section shall not apply to the living quarters of a housecar or camper.

19 **§18123. Suspension of driver's license.** (a) The Department shall immediately
20 suspend or revoke the privilege of any person to operate a motor vehicle upon receipt
21 of a duly certified abstract of the record of any court showing that the person has been
22 convicted of a violation of §18102. For purposes of this section suspension or
23 revocation shall be as follows:

24 (1) **Violation of §18102; first offense.** Upon a conviction of a violation of
25 §18102, the privilege to operate a motor vehicle shall be suspended for a period of
26 six (6) months and restricted during this period to travel to and from that
27 person's place of employment and to and from the program described in

1 §18115(b) of this chapter. The clerk of court shall take possession of the driver's
2 license and mutilate it by punching a hole in the lower right hand corner. The
3 Department shall issue a restricted license if the license expires during the
4 suspension. The restricted license shall also contain a hole punched in the lower
5 right hand corner.

6 (2) Violation of §18102; second offense within five years of conviction of
7 §18102. Upon conviction or finding of a violation of §18102 within five (5) years
8 of a conviction of §18102 or of said §§23405 and 23406 of the Government Code,
9 the privilege to operate a motor vehicle shall be suspended for a period of one (1)
10 year with no exceptions for occupational privileges or travelling to and from the
11 program described in §18115(b). The clerk of court shall take possession of the
12 person's driver's license and shall notify the Department of the revocation.

13 (3) Violation of §18102 within five years after two violations of §18102. If
14 any person is convicted of a violation of §18102 and the offense occurred within
15 five (5) years of three (3) or more separate violations of §18102 or of said §§23405
16 and 23406 of the Government Code, that person's driving privileges shall be
17 revoked by the Department for a period of not less than five (5) years.

18 (b) A conviction of an offense in any state, possession of the United States, the
19 District of Columbia, the Commonwealth of Puerto Rico, or Dominion of Canada
20 which, if committed in Guam would be a violation of §18102, is a conviction of §18102
21 for purposes of this §18123. The Department shall suspend or revoke the privilege to
22 operate a motor vehicle pursuant to this §18123 upon receiving notice of such a
23 conviction.

24 §18124. Restriction or suspension of driving privilege; probation with
25 conditions; revocation of license. (a) Unless ordered to do so by the court upon a
26 finding that the terms and conditions of probation were violated, the Department shall
27 not suspend, pursuant to paragraph (3) of subsection (a) of §18123, but shall restrict the

1 privilege of any person to operate a motor vehicle upon a conviction or finding that
2 the person violated §18102, but only if the court has certified to the Department that the
3 court has granted probation to the person on conditions which include the conditions
4 specified in subsection (b) of §18301 and the court has restricted the privilege to operate
5 a motor vehicle as provided in that subsection.

6 (b) Unless ordered to do so by the court upon a finding that the terms and
7 conditions of probation were violated, the Department shall not revoke, pursuant to
8 paragraph (2) of subsection (a) of §18123, but shall suspend for one (1) year and,
9 thereafter, restrict for two (2) additional years, the privilege of any person to operate a
10 motor vehicle upon a conviction or finding that the person violated §18102, but only if
11 the court has certified to the Department that the court has granted probation to the
12 person on conditions which include the conditions specified in subsection (b) of §18301,
13 and the court has ordered the Department to suspend the privilege to operate a motor
14 vehicle as provided in that subsection.

15 (c) The restriction of the driving privilege under subsection (a) shall become
16 effective thirty (30) days from the date on which the person consented to participate in
17 the program specified in subsection (a), excluding any time or imprisonment ordered by
18 the court, but only if the person presents evidence satisfactory to the Department that
19 he or she is participating in the program specified in subsection (b) of §18301 and pays
20 fees to the Department of Fifteen Dollars (\$15) upon application for the restricted
21 license and Twenty Dollars (\$20) upon completion of the treatment program or upon
22 application for an unrestricted license, whichever is sooner. If the person fails to apply
23 for a restricted license or if the person fails to show evidence of participation within
24 thirty (30) days, excluding the time of imprisonment ordered by the court, the
25 department shall suspend the driving privilege of the person for eighteen (18) months.

26 (d) The driving privilege restricted under subsection (a) or (b) shall be limited
27 to the hours for driving to and from the place of employment and during the course of

1 employment and driving to and from activities required in an alcohol treatment
2 program specified in §18301. The Department may set for the times and days of
3 restricted operation established by the court either on a special restricted license or upon
4 the usual license form. The restriction shall continue in full force and effect until the
5 person presents evidence satisfactory to the Department that the person has completed
6 the alcohol treatment program.

7 (e) All abstracts of record showing a conviction that are forwarded to the
8 Department shall state whether the court has granted probation to the person on
9 conditions which include the conditions specified in §18301 and state the date on which
10 the person consented to participate in the program.

11 ARTICLE 2

12 IMPLIED CONSENT AND SUSPENSION OR 13 REVOCATION OF DRIVING PRIVILEGES AND LICENSE

14 §18201. Implied consent of driver of motor vehicle to submit to blood, or breath
15 testing to determine alcohol or controlled substances content of blood. (a) Any person
16 who operates a motor vehicle on the public highways or roadways of the Territory shall
17 be deemed to have given consent to blood, or breath test for the purpose of determining
18 the alcohol or controlled substance content of the person's blood.

19 (b) The blood, or breath tests shall be administered at the request of the peace
20 officer having reasonable cause to believe the person driving or in actual physical
21 control of a motor vehicle upon the public highways or roadways is under the
22 influence of alcohol or controlled substances only after (1) a lawful address, and (2) the
23 person has been informed by a peace officer of the sanctions that may result from his or
24 her refusal to be tested.

25 (c) If there is probable cause to believe that a person is in violation of section
26 18102, then the person shall have the option of using a blood or breath test for the
27 purpose of determining alcohol or controlled substance content of that person's blood.

1 (d) No person, other than a physician, registered nurse, or person licensed in a
2 clinical laboratory may withdraw blood for the purpose of determining the alcohol or
3 controlled substance content therein. This limitation shall not be apply to the taking of
4 a breath specimen.

5 (e) The implied consent of a person to be tested shall not be withdrawn by
6 reason of the person's being dead, unconscious or in any other state which renders the
7 person incapable of consenting or refusing to be tested. In such event, a test of the
8 person's blood shall be administered.

9 (f) If a person under arrest refuses to submit to a breath or blood test, none
10 shall be given.

11 **§18202. Sanctions for refusal to submit to or failure to complete a blood, or**
12 **breath test. (a) If any person refuses the officer's request to submit to, or fails to**
13 **complete a blood, or breath test or tests upon receipt of the officer's sworn statement**
14 **that the officer had reasonable cause to believe the person had been driving a motor**
15 **vehicle in violation of §18102 and that the person had refused to submit to, or did not**
16 **complete, the blood or breath tests after being requested by the officer, then the**
17 **Department of Revenue and Taxation (hereinafter referred to as Department) shall (1)**
18 **suspend the person's privilege to operate a motor vehicle for a period of six (6) months,**
19 **or (2) revoke the person's privilege to operate a motor vehicle for a period of two (2)**
20 **years if the person has been convicted of a separate violation of §18102 or §18202(a) or**
21 **any prior offense of driving under the influence violation, or any combination thereof,**
22 **within five (5) years of the date of the refusal, or (3) revoke the person's privilege to**
23 **operate a motor vehicle for a period of three (3) years if the person has been convicted**
24 **of two (2) or more separate violations of §18102, §18202(a)) prior offense of driving**
25 **under the influence, or any combination thereof, within five (5) years of the date of the**
26 **refusal.**

1 **§18203. Administrative Revocation or Suspension of Driving Privilege and**
2 **License Procedures.** (a) If a person is arrested for violation of §18102, on a
3 determination by the arresting officer that there was reasonable suspicion to stop the
4 motor vehicle, or that the motor vehicle was stopped at an intoxication control
5 roadblock and there was probable cause to believe that the arrested was driving,
6 operating, or in actual physical control of the motor vehicle while under the influence
7 of alcohol, or controlled substances, then (1) the arresting officer shall inform the
8 person that he or she has the option to take a breath test or a blood test, and (2) the
9 arresting officer shall also inform the person of the sanctions under this Article,
10 including the sanction for refusing to take a breath or a blood test.

11 (b) The peace officer's sworn statement or affidavit shall within three (3)
12 working days of the arrest be submitted to the Department on a form furnished or
13 approved by the Department.

14 (c) Upon receipt of the peace officer's sworn statement, the Department shall
15 within five (5) working days notify the person in writing of the action taken.

16 (d) Within fifteen (15) working days from the date of receipt of the notice from
17 the Department, the person may request in writing a hearing on a form provided by the
18 Department in its notice of the action taken.

19 (e) The Department shall within ten (10) working days of receipt of the person's
20 written request for a hearing conduct such hearing.

21 (f) The scope of the hearing shall cover the issues of whether the peace officer
22 had reasonable cause to believe the person had been operating or driving or in actual
23 physical control of a motor vehicle in violation of §18102, whether the person was
24 placed under arrest, whether the person refused to submit to, or did not complete the
25 blood or breath test after being requested by a peace officer, and whether the person had
26 been told that his or her driving privilege would be suspended or revoked if he or she
27 refused to submit to, or did not complete, the blood or breath test.

1 (g) At the commencement of any such hearing, the person who is alleged to
2 have refused to submit to testing shall surrender to the Department any license or
3 permit issued in the name of the person which authorizes the person to drive or be in
4 control of a vehicle and which license or permit was not previously suspended or
5 revoked.

6 (h) If the person establishes by a preponderance of the evidence that he or she
7 did not refuse to submit to the required test or that he or she was not driving or in
8 actual physical control of a motor vehicle, the Department shall return to his or her
9 license or permit.

10 (i) Within ten (10) working days of the commencement of the hearing, the
11 Department shall render a decision to suspend or revoke the driving privilege and
12 driver's license or permit, or dismiss the action and the person shall be notified of the
13 decision.

14 (j) If the Department determines, upon a hearing of the matter, to suspend or
15 revoke the affected person's privilege to operate a motor vehicle, the suspension or
16 revocation decision shall become effective within ten (10) working days after certified
17 mailing of notice to the person by the Department.

18 (k) If the Department's decision is to revoke or suspend the person's privilege
19 to drive, the person may file for de novo judicial review within ten (10) working days
20 after the decision is mailed. (1) The filing of the petition shall not operate as a stay of
21 the administrative revocation or suspension nor shall the court stay the administrative
22 revocation or suspension pending the outcome of the judicial review. (2) The petition
23 shall state with specificity the grounds upon which the petitioner seeks reversal of the
24 administrative revocation. (3) The court shall schedule the judicial review as soon as
25 practicable, and the review shall be on the record of the administrative hearing without
26 taking of additional testimony or evidence. (4) If the petitioner fails to appear without
27 just cause, the court shall affirm the administrative revocation or suspension. (5) The

1 sole issues before the court shall be whether the Department exceeded constitutional or
2 statutory authority, erroneously interpreted the law, acted in an arbitrary or capricious
3 manner, committed an abuse of discretion, or made a determination that unsupported
4 by the evidence in the record. (6) Unless the administrative revocation or suspension
5 is reversed, the revocation or suspension shall become effective pursuant to §18203(j).

6 (l) Failure of the peace officer or the Department to comply with the
7 requirements in subsections (a), (b), (c), (e) and (i) of §18203 shall result in a dismissal of
8 the action in favor of the person.

9 (m) Failure of the person to comply with subsections (d), (h) and (k) of §18203
10 shall be deemed a waiver of the rights therein, and the revocation or suspension if
11 supported by the affidavit shall become effective pursuant to §18202 and §18203(j).

12 §18204. Suspension; refusal under implied consent law; time to run
13 consecutively with other restriction, suspension or revocation. (a) The purpose of
14 this section is to require that any suspension or revocation under §18123 and any
15 restriction, suspension or revocation under §18201 or §18124 resulting from the same
16 arrest are cumulative and shall be imposed consecutively, if so ordered by the court.

17 (b) If (1) an abstract of conviction is received by the Department for an offense which
18 requires the Department to restrict, suspend, or revoke the driving privilege of a person
19 after conviction or finding of a violation pursuant to §18201 or §18202, and (2) there is a
20 suspension of that person's driving privilege already in effect for refusal to consent to,
21 or for failure to complete, a blood or breath test pursuant to §18201, and (3) that
22 suspension is administratively final and resulted from the same arrest, and (4) the
23 sentencing court orders these restrictions, suspensions, revocations, or combination
24 thereof to run consecutively, then the restriction, suspension, or revocation resulting
25 from the conviction or finding pursuant to §18123 or §18124 shall commence after the
26 suspension already in effect pursuant to §18201 has terminated.

1 **§18205.** The Department of Revenue and Taxation shall file with the Legislative
2 Secretary additional Rules, Regulations and Procedures for Implied Consent and
3 Administrative Hearings in accordance with the Administrative Adjudication Act
4 within ninety (90) days of enactment of this Act.

5 **ARTICLE 3**

6 **PROBATION AND GENERAL CONSIDERATIONS**

7 **OF PROBATION**

8 **§18301.** Conditions of probation for violation of §18102. (a) If the court grants
9 probation to any person punished under §18102, including any other terms and
10 conditions imposed by the court, the court shall impose as a condition of probation that
11 the person be subject to the following:

12 (1) that the driver shall participate in, and successfully complete an alcohol or
13 drug education program, or both of these programs as designated by the court.

14 (2) That the person be referred to a qualified substance abuse counselor for an
15 assessment of the person's alcohol dependence and need for treatment.

16 (3) The counselor shall submit a report with recommendations to the court,
17 which may require the person to obtain appropriate treatment.

18 (4) All costs for such assessment or treatment or both shall be borne by the
19 penalized person at the discretion of the court.

20 **§18302.** Probation granted under §18102; failure to comply with terms and
21 conditions; revocation or termination; procedure. (a) If any person has been granted
22 probation under the conditions of §18102 and fails at any time to participate successfully
23 in the treatment program designated by the court, then the court shall revoke or
24 terminate the probation, and the court may revoke or terminate the probation if the
25 person fails to comply with any other term or condition of probation, and the court
26 shall proceed under either of the following provisions:

1 (1) Revoke suspension of sentence and order the Department to suspend the
2 person's privilege to operate a motor vehicle from the date of the order revoking or
3 terminating probation.

4 (2) Grant a new term of probation on the condition that the person be placed in
5 the custody by DOC or GPD for at least thirty (30) days and order the Department to
6 suspend the person's privilege to operate a motor vehicle pursuant to §18201 of this
7 Article the date of the new grant of probation.

8 §18303. General probation conditions. (a) If any person is convicted of a
9 violation of §18102, the court shall not stay or suspend pronouncement of sentencing
10 and shall pronounce sentence in conjunction with the conviction in a reasonable time,
11 including time for receipt of any presentence investigation report.

12 (b) If any person is convicted of a violation of §18102 and is granted probation,
13 the terms and conditions of probation shall include, but not be limited to the following:

14 (1) A period of probation not less than two (2) years if it is a
15 misdemeanor and not less than five (5) years if it is a felony.

16 (2) A requirement that the person shall not consume alcohol or any
17 controlled substances not prescribed by a medical doctor or any combination
18 thereof.

19 (3) A requirement that the person, if arrested for a violation of §18102,
20 shall not refuse to submit to a blood or breath test for the purpose of determining
21 the alcohol or controlled substance content of his or her blood.

22 (4) A requirement that the person shall not commit any criminal
23 offense.

24 (5) A requirement that the person be referred to a qualified substance
25 abuse counselor for an assessment of the person's alcohol dependency and need
26 for treatment.

27 Section 3. §3110 of Title 16, Guam Code Annotated, is amended to read:

1 **"§3110. Same: Penalty. Any person who knowingly drives a motor**
2 **vehicle upon a highway at any time when his operator's or chauffeur's**
3 **license or driving privilege is suspended or revoked, or when a license to**
4 **drive a motor vehicle has been refused is guilty of a [petty] misdemeanor for a**
5 **first offense and of a felony of the third degree for subsequent offenses."**

6 **Section 4. 16 GCA §3101(a) and (k) are amended to read:**

7 **"(a) Unless expressly exempted under this Title, a person shall not drive a**
8 **motor vehicle upon a highway without having in his immediate possession a valid**
9 **operator's or chauffeur's license issued under this Title. An operator's license**
10 **authorizes the licensee to drive as an operator only. A chauffeur's license authorizes**
11 **the licensee to drive as an operator or as a chauffeur.**

12 **Any person who is not exempt from having a license in his possession and**
13 **drives a motor vehicle upon a highway at any time without having in his immediate**
14 **possession a valid operator's or chauffeur's license or permit issued under this Title**
15 **shall be guilty of a felony of the third degree."**

16 **"(k) The licensee or permittee shall have his license or permit in his immediate**
17 **possession at all times when driving a motor vehicle upon a highway and when so**
18 **driving shall display such license or permit upon demand of a member of the Guam**
19 **Police or any peace or traffic officer enforcing the provisions of this Title.**

20 **Any person who is not exempt from having a license in his possession and**
21 **drives a motor vehicle upon a highway at any time without having in his immediate**
22 **possession a valid operator's or chauffeur's license or permit issued under this Title**
23 **shall be guilty of a felony of the third degree.**

24 **Any charge under this subsection or subsection (a) of this Section shall be**
25 **dismissed when the person so charged produces in court an operator's or chauffeur's**
26 **license or permit duly issued to such person and valid at the time of his arrest.**

27 **Section 5. 16 GCA §3109.1 is added to read:**

1 **"3109.1. Any person who violates the provisions of subsections (a) or (e) of 16**
2 **GCA §3109 shall be guilty of a misdemeanor. Any person who violates the provisions**
3 **of subsections (b), (c), (d), (f), (g) or (h) of 16 GCA §3109 shall be guilty of a felony of the**
4 **third degree."**

5 **Section 6. 16 GCA §17101 (b) is amended to read:**

6 **"(b) Limitation of liability. The liability of an owner for imputed negligence**
7 **imposed by this Section , and not arising through the relationship of principal and**
8 **agent or master and servant, is limited to the amount of [Five Thousand Dollars**
9 **(\$5,000.00)] Twenty Five Thousand Dollars (\$25,000) for the death of or injury to one (1)**
10 **person in any one (1) accident and subject to said limit as to one (1) person is limited to**
11 **the amount of [Ten Thousand Dollars (\$10,000.00) Fifty Thousand Dollars (\$50,000) with**
12 **respect to the death of or injury to more than one (1) person in any one (a) accident and**
13 **is limited to the sum of [Five Thousand (\$5,000.00)] Twenty Thousand Dollars (\$20,000)**
14 **for damage to property of others in any one (1) accident."**

15 **Section 7. 16 GCA §17101 (e) is repealed.**

16 **Section 8. Within thirty (30) days of enactment of this Act, the Director of**
17 **Revenue and Taxation and Director of Corrections shall transmit to the Legislature cost**
18 **estimates for additional resources which may be necessary to effectuate the provisions**
19 **of this Act.**

20 **Section 9. Severability. If any of the provisions of this Act or the application**
21 **thereof to any person or circumstance are held invalid, such invalidity shall not affect**
22 **any other provision or application of this Act which can be given effect without the**
23 **invalid provision or application, and to this end the provisions of this Act are**
24 **severable.**

25 **Section 10. Study of hazardous highways. The Office of Highway Safety of the**
26 **Department of Public Works, in concert with the Guam Police Department and the**
27 **Guam Power Authority shall identify highways and roadways upon which motor**

1 vehicle and pedestrian traffic are deemed hazardous. Within one hundred and eighty
2 (180) days, the Office of Highway Safety shall proceed with and submit to the Legislature
3 a report of such identified areas and make recommendations centering on traffic and
4 pedestrian safety in such areas. Such report shall include costs for development,
5 construction, or purchase of traffic and pedestrian safety instruments and measures.

6 **Section 11. Transfer of funds.** The Governor of Guam shall exercise his transfer
7 authority by transferring the sum of One Hundred Thousand Dollars (\$100,000) to the
8 Department of Public Work's Office of Highway Safety to carry out the purposes set
9 forth in Section 10 of this Act and to immediately erect water bumpers or sand bumpers
10 on concrete poles deemed hazardous under said Section 10.

Twenty-Second Guam Legislature



Senator Pilar Cruz Lujan

Legislative Secretary

Chairperson - Committee on Judiciary and Criminal Justice

April 6, 1993

The 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 244, wishes to report its findings and recommendations for passage of Substitute Bill 244.

The Committee voting record is as follows:

<u>8</u>	TO PASS
<u>0</u>	NOT TO PASS
<u>2</u>	ABSTAIN
<u>0</u>	TO PLACE IN INACTIVE FILE
<u>1</u>	NOT VOTING

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

Sincerely,

Handwritten signature of Pilar C. Lujan in cursive script.

PILAR C. LUSAN
Chairman

COMMITTEE REPORT

On
Bill 244

An act to amend Title XXIV, Section 23100, Subsection (o) (1) and (o) (4) of the Government Code of Guam. to add a new Title XXIV, Section 23100, Subsection (o) (4), to amend Section 3110 of Title 16 of the Guam Code Annotated, and to amend Section 23405, Subsections (b), (c) (d), and (e), relative to the offense of driving under the influence of alcohol and drugs, and the penalties thereto and to provide for pedestrian and vehicle safety on the highways and roadways of Guam.

Preface

The public hearing on Bill 244 was conducted by the Committee on Judiciary and Criminal Justice on Wednesday, February 24, 1993 in the Legislative Public Hearing Room. The hearing was called to order by Committee Chairwoman Pilar C. Lujan. Also present was Senator Doris F. Brooks, author of a measure which similarly calls for strengthening laws on driving under the influence.

Overview

During the 20th Guam Legislature, legislative efforts focused on passage of a law to clamp down on drunk drivers. Since then, modifications have been sought to put in place an implied consent and forfeiture provision for the purpose of strengthening the existing law.

Subsequent to introduction of the measure, Committee Chairwoman Pilar C. Lujan discovered that the territory has no vehicular homicide provision. The lack of such a provision currently allows convicted perpetrators to serve a maximum of only three years under negligent homicide if a motorist or pedestrian is killed by a drunk driver. A vehicular homicide provision would subject offenders to a second degree felony which carries a sentence from 0 to 15 years instead of the negligent homicide sentence which carries a maximum of three years.

According to Prosecution Division officials, there were 988 driving under the influence cases filed with 417 convictions.

As a result of meetings last year between the Committee on Judiciary and Criminal Justice, the Department of Law, the Guam Police Department, and the Office of Highway Safety, Bill 244 was crafted. Called the Safe Streets Act, the measure also provides for motorist and pedestrian safety.

Committee Findings and Testimony

Chief Prosecutor Frances Tydingco-Gatewood and Assistant Attorney General Amber Malarney appeared before the Committee expressing support for the measure. Aside from noting necessary technical modifications to address typographical errors, Chief Prosecutor Tydingco-Gatewood suggested that language be inserted in the measure to provide coordinated efforts to establish automatic license revocation procedures. (ATTACHMENT I)

The Chief Prosecutor recommended that the police, prosecutors, RevTax motor vehicle representatives, and court officials be tasked to develop license suspension and revocations procedures.

Deputy Assistant Attorney General Karen Keeler noted that the establishment of an administrative process would be effective in handling license suspension and revocation proceedings.

Citing statistics as data relating to drunk driving and license revocation, high school student Ernest Ochaco appeared on behalf of the Dededo Drug Free Organization in support of the measure. He testified that "this will not only keep the offenders off the streets, but it should also send a message to irresponsible people who drink and drive."

Noting the overlap of areas between the measure she authored and Bill 244, Senator Brooks recommended becoming a sponsor of Bill 244 and substituting the language of the measure by incorporating some provisions from her measure.

On concerns with seizure and forfeiture, the Chief Prosecutor noted that language should be added to protect the rights of joint ownership.

The Chief Prosecutor and Office of Highway Safety representative Terry Santos expressed support for the redefinition of blood alcohol content from .10 to .08 and noted that 35 of 50 jurisdictions have already adopted such definition.

Mr. Jack Rice also appeared before the Committee and testified in support of the measure. Additionally, he suggested raising fines for moving violations and establishing a driver's education fund. (ATTACHMENT II)

Mr. Pedro D. Paulino, a concerned citizen and parent, also testified in support of the measure. (ATTACHMENT III)

Ms. Mary Kolski, a representative of the Department of Mental Health and Substance Abuse, noted the lack of education and treatment provisions in the measure. Ms. Kolski noted that the Department has the resources available to conduct such a program.

The committee also received written testimony in favor of the measure from the family of the late Vicky Flores, a running enthusiast who was killed last year by a drunk motorist. (ATTACHMENT IV)

Mr. Robert L. Wade, President of the Guam Running Club submitted written testimony in support of the measure and suggested that non-governmental organizations such as the Guam Running and Guam Bicycle clubs be included in discussions regarding planning for highway safety. (ATTACHMENT V)

Additionally, Superior Court of Guam Judicial Hearings Referee Robert Cruz submitted testimony in support of the measures and recommended that license suspension and revocation proceedings be handled by the executive branch instead of through the courts given the existing caseloads. (ATTACHMENT VI)

Guam Police Chief Adolf P. Sgambelluri also submitted testimony in support of the measure because it is needed. (ATTACHMENT VII)

The Police Chief noted the measure will reduce drunk driving and related accident. Additionally, according to the Chief, the measure will serve as a deterrent to repeat offenders by allowing for stiffer sentences and seizure and forfeiture of vehicles.

Attorney Joaquin Arriola, Jr. submitted testimony in favor of the measure's goals but recommended tailoring around California's drunk driving laws.

(ATTACHMENT VIII)

Guam Telephone Authority General Manager James Underwood submitted testimony in support of the measure's provision calling for the study and placement of emergency telephone call boxes along island roadways. (ATTACHMENT IX)

Committee Recommendations

The Committee took under advisement the suggestions made to them by those who either presented or submitted testimony on Bills 244 and 186.

To provide further safety for pedestrians and motorists on Guam's highways, the Committee has drafted Substitute Bill 244 and recommends its passage. (See Substitute Bill 244)