



Government of Guam
GUAM POLICE DEPARTMENT

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U.S. Territory of Guam



JOSEPH F. ADA
Governor of Guam

FEB 24 1993

COLONEL A.P. SGAMBELI
Chief of Police

FRANK F. BLAS
Lieutenant Governor

The Honorable Pilar C. Lujan
Chairperson, Committee on Judiciary and
Criminal Justice
Twenty-Second Guam Legislature
155 Hesler Street
Agana, Guam 96910

Subject: Bill No. 244 - The safe Streets Act of 1993;
Bill No. 186 - An Act to Add Section 23405.1 to the
Government Code to Provide for Summary Revocation of the
Privileges to Operate a Motor Vehicle of Any Person
Refusing to Submit to a Breath or Urine Test Under the
Implied Consent Law.

Dear Senator Lujan:

The Guam Police Department supports the enactment of many of the provisions contained in Bill No. 244 because they are needed in the fight against drunk driving.

The provision in Section 5 of Bill No. 244 is critically needed for reducing DUIs and related car accidents that result in serious injuries or deaths. This section proposes to amend Subsection 23405(b) of Title XXIV of the Government Code of Guam by making it "unlawful for any person who has eight one-hundredths of one percent (.08) or more, by weight of alcohol in his blood, to drive or be in a actual control of any vehicle." Lowering the Breath/Blood Alcohol Content (BAC) from .10 to .08 is in keeping with contemporary traffic safety enforcement and scientific literature and research data as well as with the public's understanding that driving is impaired at BAC levels lower than .10.

The provisions in Sections 3,4,5,6,7 and 8 are also necessary in creating a deterrence to those persons convicted of driving under the influence of alcohol and/or drugs more than one time. Increasing the severity of the penalties (e.g., longer time period for license suspension) for repeat DUI offenders and establishing mandatory minimums should have a significant impact. GPD believes that such an impact will especially be felt by a DUI offender convicted for a third time and whose vehicle originally impounded in connection with the third DUI offense is now subject to asset



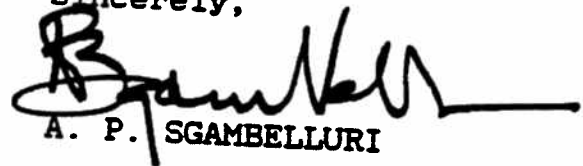
The Honorable Pilar C. Lujan
Chairperson, Committee on Judiciary and
Criminal Justice
Subject: Bill Nos. 244 and 186
Page 2 of 2

forfeiture that places Guam up there with a handful of jurisdictions who are on the cutting edge of DUI traffic safety enforcement laws with such a provision.

The issue of immediate suspension or revocation of drivers licenses or permits under the Implied Consent Law for refusals to submit to testing for blood alcohol content (BAC) is addressed in both Bill 244, Section 3 and Bill 186. The Guam Police Department is supportive of the intent of those two bills to supplement Guam's DUI enforcement laws by providing for an administrative response of drivers license suspension or revocation for refusals to submit to BAC testing. The latter bill (No. 186) appears to be far more comprehensive than the former bill (No. 244) in setting out the rules, regulations and procedures which address due process issues for those whose drivers license is suspended or revoked for refusing to submit to testing of BAC. However, the Department of Revenue and Taxation may desire more latitude on developing rules and regulations for this area through the Administrative Adjudication Law rather than having them locked in statutorily at this point without regard for their available resources to implement such procedures.

Finally, the Guam Police Department supports the provisions of Sections 10 and 12 of Bill 244 calling for research and identification of hazardous areas on our highways and for the placement of emergency call boxes throughout the island. This provides for better planning rather than addressing the problem areas in piecemeal fashion when the matter is individually brought to the attention of GPD, Department of Public Works, Office of Highway Safety and/or the Legislature.

Sincerely,


A. P. SGAMBELLURI

February 24, 1993

Senator Pilar Cruz Lujan
Legislative Secretary
Chairman,
Judiciary and Criminal Justice
155 Hesler Street
Agana, Guam 96910

Dear Senator Lujan:

Good morning, I am very pleased to offer support of the concept of providing emergency call boxes along the roadways of the island. Last year GTA worked with the Guam Energy Office, The Guam Police Department, Guam Fire Department and the Department of Parks and Recreation in providing a study to determine the best method to provide emergency call box facilities for the island of Guam.

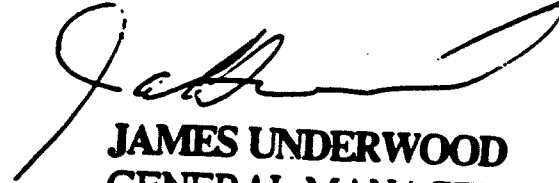
That plan recommended the placement of 27 emergency call boxes around the island with funding allocated through the Guam Energy Office for \$110,000.00 which will pay for all equipment and installation.

Because our study was for specific grant purposes the scope and intent of that study was somewhat narrow and limited when compared to the broader unlimited scope and intent of Section 12 of Bill 244, which warrants a more comprehensive and exhaustive input. The study indicated preliminary costs of \$110,000.00 for 27 call boxes around the island.



As we were happy to lead the 911 implementation task force, we welcome this new opportunity to be of service again.

Thank you for allowing GTA to testify before you this morning on this important bill.



JAMES UNDERWOOD
GENERAL MANAGER

ATTACHMENT:

CELLULAR CALL BOX SYSTEMS

GTE

ORANGE COUNTY
**CALL
BOX**
133-85T

- Highway
- Campuses
- Parking Lots
- Shopping Centers
- Stadiums
- Hospitals
- Schools
- Special Events
- Hike & Bike Trails





CELLULAR CALL BOX APPLICATIONS

GTE Government Information Services, Inc. cellular call boxes provide vital communication services on highways, bridges, tunnels, school campuses, parks, hike and bike trails, stadiums, marinas, golf courses, beaches, parking areas, shopping centers, hospitals and other critical locations.

NOW EVERYONE HAS A CELLULAR TELEPHONE

GTE solar powered cellular call boxes, designed as stand-alone units, offer highly reliable telephone quality voice communications.

- Emergency And Non Emergency Assistance
- Enhancement For Personal Security
- Deterrence Of Crime And Vandalism
- Timely Resolution Of Traffic Incidents

INSTALLATION AND SUPPORT SERVICES

Our "highway approved" bases and standards are readily adaptable for other types of installations. We also offer other mounting methods and can modify mounting hardware for special needs, including wall mounting or attachment to a variety of other existing poles.

Our experienced staff is skilled in all aspects of the job - from site surveys and signal strength tests to construction, installation, testing/certification, and final "turn-over" to the customer.

Our impressive statistical database of information on use, operating factors and applied data from actual operational installations gives you a "head start" for a successful implementation.

We offer various maintenance plans to respond to your needs and ensure top performance from the call box system.

PRODUCT FEATURES

Portable - No Trenching

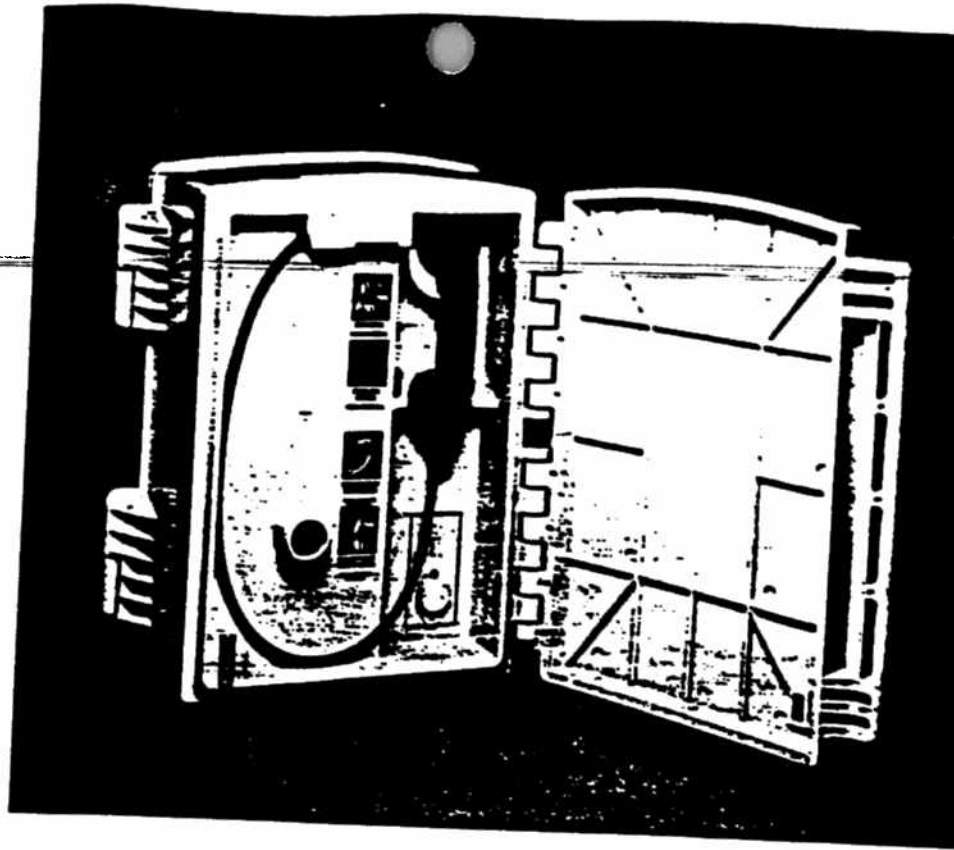
Cellular network operation and solar power make this call box transportable for changes in location or for temporary use. Ideal for remote or difficult to access sites.

Battery Operated with Solar or AC Recharging

The call box's batteries can be recharged through either a solar panel or AC source including 110 and 220 VAC. Solar recharging results in a stand-alone independent unit, no cables or lines.

Rugged Lexan® Housing

Engineered to withstand severe weather and vandal abuse, the call box is injection molded from high strength Lexan® polycarbonate structural foam and is finished with a UV stabilized high gloss polyurethane enamel. Weather proofing gaskets, a special hardened lock, and tamperproof hardware adapt it to "tough"



environments. Receiver for hearing impaired has 29 inch armored cable for wheelchair handicapped.

Box Location Identification

ANI (automatic number identification) is sent whenever a box calls the answer center. The operator can verify the caller's location by this ANI even if the caller does not speak but pushes the call activation button.

Self Diagnostic/Alarm Features

Each box "reports" its status on a pre-selected recurring time interval and can send real-time alarms for major malfunctions, tampering or knockdowns.

Call box alarm conditions include: tilt or knockdown including vandalism, outer door open, transceiver abnormalities, authorized and unauthorized inner door entry, open solar panel circuit, low battery, light burnout, handset circuit open, processor (BIT) test and cellular system problems.

Remote Programming

Using the maintenance computer, all boxes in the system can be remotely programmed for changes in report times; new or alternate number to be called; masking of alarms; number of redial attempts; intervals between reports; call-back time and up to nine different call box personalities.

Illuminated Call Panel

Inside front panel has overhead lamp to illuminate the handset, the call activation push-button calling instructions during periods of low light.

Electronic Access

By holding a hand held DTMF tone generator against the handset speaker, up to 20 additional pre-programmed numbers may be dialed in the transceiver memory slots. Authorized personnel can use this feature in the conduct their duties without interrupting the answer center.

Optional Answering Equipment

Available answering point equipment ranges from a simple LED decoder and thermal printer to specially designed computerized answer station with monitor display of the call box identification descriptive data on the location, call box telephone number, call hold lapse time status and provision for call time extensions.

Optional "Blue Light" Identification

"Blue-light" illumination of the call box is available to provide call box identification quickly at night.

GTE Government Information Services, Inc.

1 Jenner, Suite 100, Irvine, California 92718 714/727-3021

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Twenty-Second Guam Legislature

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COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

Vote Sheet on: Substitute Bill 244

| <u>COMMITTEE MEMBER</u> | <u>TO PASS</u> | <u>NOT TO PASS</u> | <u>ABSTAIN</u> | <u>TO PLACE IN INACTIVE FILE</u> |
|--|-------------------------------------|--------------------------|-------------------------------------|----------------------------------|
| <u><i>Pilar C. Lujan</i></u> Senator Pilar C. Lujan Chairman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>F. R. Santos</i></u> Senator Francisco R. Santos Vice Chairman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Madeleine L. Bordallo</i></u> Senator Madeleine L. Bordallo | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Anthony C. Blaz</i></u> Senator Anthony C. Blaz | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Herminia D. Dierking</i></u> Senator Herminia D. Dierking | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Carl T. C. Gutierrez</i></u> Senator Carl T. C. Gutierrez | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Vicente C. Pangelinan</i></u> Senator Vicente C. Pangelinan | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Don Parkinson</i></u> Senator Don Parkinson | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Joe T. San Agustin</i></u> Speaker Joe T. San Agustin | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Thomas V. C. Tanaka</i></u> Senator Thomas V. C. Tanaka | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u><i>Antonio R. Unpingco</i></u> Senator Antonio R. Unpingco | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

JOAQUIN C. ARRIOLA
MARK E. COWAN
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JOAQUIN C. ARRIOLA, JR.

VIA FACSIMILE

CONFIRMATION COPY

March 5, 1993

Honorable Pilar C. Lujan
Chairwoman
Committee on Judiciary and Criminal Justice
22nd Guam Legislature
155 Hesler Ave.
Agana, Guam 96910

Re: Bill Nos. 114, 186, and 244

Dear Senator Lujan and Members of the Committee:

I attended the public hearing on the above bills, however, due to time constraints I was unable to deliver oral testimony. In lieu, I submit the following comments regarding the above bills currently pending in your committee.

Bill 114 will provide for an additional judge of the Superior Court of Guam. I join in the comments submitted by the Guam Bar Association Bench Bar Committee, particularly the concern that before any judgeship is created, your committee consider the other problems currently facing our court. It is clear that of the current judges, some work much harder than others. Senator Ben Pangelinan's inquiries regarding the absenteeism rate of the judges is a valid and justified concern of litigators who appear regularly in court only to be told that a judge is not available. Many in the bar, including myself, feel that perhaps if all the current judges did their fair share of work, there would not be so many problems and backlogs.

The Bench Bar Committee submitted a copy of its survey of Guam's lawyers regarding the efficiency of our court system. A brief glance at the survey reveals it is a comprehensive attempt to gauge court problems and find solutions to them. Adding a new judge may be a simple method of resolving the legislative intent and findings stated in Section 1 of Bill 114. However, in order to accurately and effectively address the legislative intent and findings and before taking any action on Bill 114, your committee should, at the very least, await the forthcoming

Honorable Pilar C. Lujan
Re: Bill Nos. 114, 186, and 244
March 4, 1993

report on the survey and opinions of those who face the problems of the court on a daily basis.

Lastly, if the new judgeship is created (which appears likely), the appointee should be carefully scrutinized to ensure a competent trial judge is seated so that the problems will be corrected. Permitting an inexperienced political crony to fill the position will only serve to further burden the court's problems.

Bills 186 and 244 seek to strengthen Guam's drunk driving laws. I support a safe streets act; who wouldn't? I also support tough drunk driving laws to deter such conduct. However, I oppose the bills as currently drafted. Please consider the following.

Our island's drunk/drugged driving laws should not only be used to sock it to a d.u.i. suspect and convict. If your media sound bites for stiffer penalties, effective combatence of the alcohol/drug driving casualties and plethora of other societal ills caused thereby are sincere, then perhaps you should follow one of the nation's strictest and most comprehensive set of laws, California's. Take a moment to compare California's Vehicle Code Article 2 "Offenses Involving Alcohol and Drugs," (Cal. Vehicle Code §23152 - §23249) to Guam's Government Code Section 23405 et.seq. and your proposed bills. Clearly, California has enacted a comprehensive, tough (lots of bite in it), and fair set of d.u.i.-related laws.

California's laws ensure stiff penalties, appropriate safeguards in lieu of the denial of numerous privileges and rights, and adequate professional treatment and education for long-term success. By comparison, and as evidenced by the Legislature's inability to comprehensively address the d.u.i. problem here on Guam (i.e., our d.u.i. law has been amended several times over the past few years), the proposed legislation is utterly inadequate. It vests broad and sometimes exclusive discretion in officers, many of whom already have chips on their shoulders, to yank someone into jail, take away their car and license and eventually sell the car. This is opening the door to abuse. It does not consider varying degrees of punishment for factors such as causing injury or death, presence of children in the car, subsequent offenses, and high blood alcohol content levels; nor does it ensure that citizens are protected from overzealous police conduct in an implied consent

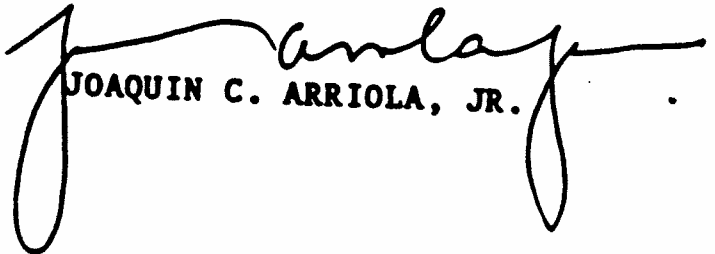
Honorable Pilar C. Lujan
Re: Bill Nos. 114, 186, and 244
March 4, 1993

jurisdiction. California's codes address these issues and more. For instance, California's laws regarding implied consent ensure that a suspect is given a choice of which test to submit to, and that officers adequately advise suspects of their rights. The bottom line is this: if you are going to once again amend Guam's d.u.i. laws, at least try to do it right. Adopting some of California's provisions would assist in developing a comprehensive law to address a broad problem.

Piecemeal legislation like Bills 186 and 244 make for good headlines and media releases, but they make bad law.

Thanks for the opportunity to comment. Si Yuus Maase.

Sincerely,


JOAQUIN C. ARRIOLA, JR.

D#3862J

fc: All Senators



Office of the Attorney General
Territory of Guam
Prosecution Division

Elizabeth Barrett-Anderson
Attorney General

Phone: (671) 475-3406
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Donald L. Paillette
Chief Deputy Attorney General

March 10, 1993

Frances Tydingco-Gatewood
Chief Prosecutor

Honorable Senator Pilar C. Lujan
Chairman
Committee on Judiciary & Criminal Justice
Twenty-second Guam Legislature
Agana, Guam

Dear Senator Lujan:

After examining the proposed Safe Streets Act of 1993, Bill No. 244, the Prosecutor's Office supports the bill. The .08 per cent B.A.C. and the Administrative License Revocation provisions put Guam at the forefront of DWI enforcement and prosecution. There are several suggestions I would like to make which may not have been included in my oral testimony before your committee.

1. Administrative License Revocation

With regard to Administrative License Revocation for individuals refusing to submit to B.A.C. testing addressed in Bill No. 244 and Bill No. 186, our office completely supports the intent of those bills. However, in order to provide the Department of Revenue and Taxation discretion in developing rules and regulations governing this area, we suggest a task force be appointed. The task force should include individuals from Revenue and Taxation, Guam Police Department, the Prosecution Division of the Attorney General's Office and the Department of Highway Safety, Superior Court of Guam. The purpose of the task force would be to develop and implement appropriate procedures through the Administrative Adjudication Law which take into account the available resources of the Department of Revenue and Taxation.

Just as a matter of form, Section 3 on page 2, line 2, should read as follows:

COMMONWEALTH NOW!

Upon refusal to submit to a test any person holding a driver's license or permit issued by the Territory of Guam requested to submit to a test as provided in subsection (o)(1), above,

2. Operating with a suspended or revoked license.

In order to effectively deter offenders from driving while their license is suspended or revoked, we suggest the offense be a misdemeanor rather than the proposed petty misdemeanor.

3. Period of License Suspension and Impoundment of Vehicle

For first offenders, the period of license suspension should be between ninety (90) days and one (1) year. Second offenders should have their licenses suspended for at least one (1) year and should not be entitled to occupational privileges. Likewise, those individuals committing third offenses within a limited period should have their license suspended in excess of one (1) year.

The Guam Police Department temporarily impounds all vehicles involved in alcohol related traffic offenses and we support this as it gets the vehicle off the highway even if the offender is released after arrest and processing. However, impoundment of a vehicle during the entire period that an individual's privilege to operate a vehicle is suspended is not necessary for first offenders. Also, there may be problems where the vehicle is jointly owned or a family's sole means of transportation.

As a matter of form, Section 7, page 3, line 7, should read as follows:

conviction. In those cases where limited driving privileges are granted by ...

4. Jail Sentences

Second and third offenders are currently serving mandatory jail sentences under our office's and the court's guidelines. We recommend that provisions for jail sentences be included in the legislation.

Letter to Senator Lujan
March 10, 1993
Page 3

5. Vehicle Forfeiture

Our office views vehicle forfeiture as an extremely effective method of deterrence. However, we want to ensure that the forfeiture does not deprive a defendant's right to due process. Where a third offender's vehicle is seized, the vehicle should be disposed of in accordance with those provisions of law relating to assets forfeiture.

Forfeiture problems may arise where a vehicle is jointly owned or a family's sole means of transportation. The court should be given latitude in these areas.

We are submitting a revision of the proposed DWI law which incorporates our suggestions and our proposed negligent homicide law. Hopefully this will be of assistance to your committee in enacting the most comprehensive DWI law possible.

Sincerely yours,



FRANCES TYDINGCO-GATEWOOD

9 G.C.A. § 16.70(a)

VEHICULAR HOMICIDE

A person is guilty of Vehicular Homicide if, while driving a vehicle, he does any act forbidden by law in the driving of the vehicle or if he negligently drives a vehicle, which act or negligence proximately causes death to any person other than the driver.

In proving that the person did any act forbidden by law, it shall not be necessary to prove that the person possessed a culpable mental state as allowed in section 4.45 of this Title.

For purposes of this section, "negligence" is defined as the failure to use the ordinary or reasonable care which a person of ordinary prudence would use in order to avoid injury to himself or to others under similar circumstances.

Vehicular Homicide is a felony of the third degree and shall be punishable by a term of incarceration of _____.

9 G.C.A. § 16.70(b)

VEHICULAR HOMICIDE WHILE INTOXICATED

A person is guilty of Vehicular Homicide While Intoxicated if, while driving a vehicle in violation of section 23405(a) or (b) of Title 16 of the Government Code, he does any act forbidden by law in the driving of the vehicle or if he negligently drives a vehicle, which act or negligence proximately causes death to any person other than the driver.

In proving that the person did any act forbidden by law, it shall not be necessary to prove that the person possessed a culpable mental state as allowed in Section 4.45 of this Title.

For purposes of this section, "negligence" is defined as the failure to use the ordinary or reasonable care which a person of ordinary prudence would use in order to avoid injury to himself or to others under similar circumstances.

Vehicular Homicide While Intoxicated is a felony of the second degree and shall be punishable by a term of incarceration of _____.

**Section 23405 Driving While Under
The Influence of Alcohol or Drugs**

(a) It is unlawful for any person who is under the influence of alcohol or any drug or under the combined influence of alcohol and any drug, to drive or be in actual or physical control of any vehicle.

(b) It is unlawful for any person who has eight one-hundredths of one percent (.08%), or more, by weight, of alcohol in his blood to drive or be in actual or physical control of any vehicle.

(c) A person convicted of violating subsections (a) or (b) of this section shall be guilty of a misdemeanor, and upon conviction shall have his privilege to operate a motor vehicle suspended by the Court as provided in subsection (d) of this section and/or have the vehicle in which the offense was committed impounded by the Guam Police Department or its authorized agent at such locations as shall be designated by the Chief of Police, for the same period as the privilege to operate a motor vehicle is suspended. The towing and impoundment of vehicles pursuant to provisions of this section shall be at the expense of the person charged with the violation, in addition to any fine or restitution imposed and ordered by the Court.

(d) Upon conviction for any violation of this section a person shall be sentenced in accordance with the following:

(1) Any person convicted for a first offense under this section shall be sentenced to a minimum of forty-eight (48) hours imprisonment in the custody of the Department of Corrections or the Guam Police Department; provided however, that the Court may waive the mandatory minimum jail sentence a for first a time offender and impose other alternative sentencing. Additionally that person shall have his privilege

to drive suspended for a minimum mandatory period of ninety (90) days and a maximum of one year, but the Court may permit the person a limited privilege to drive if driving is required for that person to maintain his livelihood.

In those cases where limited driving privileges are granted by the Court, the Court shall issue a document to the individual granted limited privileges, signed by a Judge of the Superior Court, which shall specifically set forth the terms and conditions of such limited privileges. This document must be carried by the individual granted limited privileges at all times when he is driving. Failure to produce such document upon the request of a peace officer of the Territory of Guam shall be considered a violation of Section 3110 of Title 16, Guam Code Annotated. Proof by the Defendant that he had been issued limited privileges but at that time did not have the required document in his possession shall not be a defense.

(2) If any person is convicted of a violation of this section and the offense occurred within six (6) years of the date of conviction of a prior violation of this section or of sections (_____), that person shall be sentenced to a mandatory minimum period of seven (7) days imprisonment in the custody of the Department of Corrections or the Guam Police Department, no part of which may be suspended. Additionally, that person shall have his driving privilege suspended without occupational privileges for a mandatory minimum period of one year period.

(3) If any person is convicted of a violation of this section and the offense occurred within eight (8) years of the dates of conviction of two or more prior violations of this section or of sections (_____), that person shall be sentenced to a mandatory minimum period of twenty-one (21) days imprisonment in the custody of the

Department of Corrections or the Guam Police Department, no part of which may be suspended. Additionally, that person shall have his driving privilege suspended without occupational privileges for a mandatory minimum period of one (1) year and maximum of five (5) years.

(e) In addition to any other sentence imposed, the Court shall impose a mandatory fine of not less than One Thousand Dollars (\$1000) upon any person violating subsections (a) or (b) of this section and shall require restitution be made to persons injured or for property damaged.

(f) For purposes of this section date of conviction means the date on which a plea of guilty or nolo contendere was entered or the date on which a verdict of guilty was returned by either a judge or jury at trial. Notwithstanding any other law to the contrary, any conviction for vehicular homicide while intoxicated; for driving while under the influence with injuries; or for driving under the influence of alcohol, intoxicating liquor or drugs under this section or any predecessor statute, shall be considered a prior conviction within the meaning of subsections (d) (2) and (d) (3).

(g) Any person convicted of violating any provisions of this section for a third time, or more, shall forfeit the vehicle in which the third offense, or more, was committed. However, those cases where there is a showing of extreme circumstances or where a vehicle is owned by a person other than the one convicted of three (3) or more violations of this section, and the owner had no knowledge that the vehicle would be driven by an intoxicated person and where the owner had no knowledge of any prior violations of this section by the convicted person, the Court, instead of ordering the forfeiture of the vehicle, may suspend the convicted person's driving privilege for a minimum of one (1) year and a maximum of five (5) years and no limited privilege to operate a motor vehicle shall be granted.

At the time of arrest for any offense under this subsection, the vehicle in which the offense was committed shall be impounded by the Guam Police Department and released only upon the approval of the Prosecution Division of the Attorney General's Office when it is determined that the vehicle is not subject to asset forfeiture under this section. The forfeiture and seizure of the vehicle shall be enforced by the Guam Police Department and the vehicle shall be disposed of, in accordance with those provisions of law relating to assets forfeiture, by public sale or auction at such times as the Guam Police Department may choose to conduct such sale or auction. The Chief of Police of the Guam Police Department shall convey clear title as owner of said confiscated vehicles, subject to any perfected security interests in said vehicles.

(h) It is unlawful for any person, while under the influence of alcohol or any drug or under the combined influence of alcohol and any drug, to drive or be in actual or physical control of any vehicle and, when so driving or controlling, do any act forbidden by law in the driving of the vehicle or negligently drive a vehicle, which act or negligence proximately causes bodily injury to any person other than the driver.

(i) It is unlawful for any person, while having eight one-hundredths of one percent (.08%), or more, by weight of alcohol in his blood, to drive or be in physical control of a vehicle and, when so driving, do any act forbidden by law in the driving or control of the vehicle or negligently drive a vehicle, which act or negligence proximately causes bodily injury to any person other than the driver.

For the purposes of this section, "negligence" is defined as the failure to use the ordinary or reasonable care which a person of ordinary prudence would use in order to avoid injury to himself or to others under similar circumstances.

(j) A person convicted of violating subsections (h) or (i) of this section shall be guilty of a felony of the third degree.

(k) The fact that any person charged with violating any of the provisions of this section is or has been legally entitled to use alcohol or any drug shall not constitute a defense against any charge of violating the provisions of this section.

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

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

(2) If there was at that time five one-hundredths of one percent (.05%) or more but less than eight one-hundredths of one percent (.08%) by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol at the time of the alleged offense.

(3) If there was at that time eight one-hundredths of one percent (.08%) or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of alcohol at the time of the alleged offense.

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

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

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

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

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

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

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

Section 2. COUNSELING ON CONVICTION. Whenever the court penalizes a person, other than a first time offender, under this Chapter, it shall also require that the person be referred to a qualified substance abuse counselor at the Department of Mental Health and Substance Abuse for an assessment of the person's alcohol dependence and need for treatment. The counselor shall submit a report with recommendations to the Court, which may require the person to obtain appropriate treatment. All costs for such assessment or

treatment or both shall be borne by the penalized person except for one determined to be indigent.

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

To Be Noted: The changes in this proposed law were drawn from the California Driving while under the influence law.

TWENTY-SECOND GUAM LEGISLATURE
1992 Regular Session

Bill No.

Introduced By:

Committee on Rules

AN ACT TO AMEND § 23100 SUBSECTION (o)(1) and (o)(4) OF THE GOVERNMENT CODE, TO ADD A NEW § 23100 SUBSECTION (O)(4), TO AMEND § 3110 OF TITLE 16 OF THE GUAM CODE ANNOTATED, AND TO AMEND § 23405 SUBSECTIONS (b), (c), (d), and (e), RELATIVE TO THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL AND DRUGS, AND THE PENALTIES THERETO.

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

Section 1. Subsection (o)(1) of Subsection 23100 of the Government Code is amended to read:

"(o) (1) Any person who operates a motor vehicle within the Territory of Guam shall be deemed to have given his implied consent, subject to Section 23405 of the Government Code, to a test or tests of his breath, blood and/or urine for the purpose of determining the alcoholic or drug content of his blood if arrested, or if he could have been arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or any drug or if a police officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle within the Territory of Guam

while under the influence of alcohol or any drug. The test or tests shall be administered at the direction of the police officer having reasonable cause to believe the person to have been driving or in actual physical control of a motor vehicle within the territory of Guam while under the influence of alcohol or any drug. The Police Department shall designate which of the aforesaid tests shall be administered."

Section 2. A new Subsection (o)(4) is added to Subsection 23100 of the Government Code to read:

"(o) (4) Any person holding a driver's license or permit issued by the Territory of Guam requested to submit to a test as provided in Subsection (o)(1), above, shall have said driver's license or permit immediately confiscated by the arresting peace officer, and said driver's license or permit shall be under immediate suspension for a period of one hundred and eighty days from the date of refusal. The confiscated license or permit shall be transmitted to the Department of Revenue and Taxation, together with a notice of suspension, at which time said suspension shall be entered onto the permanent driving record of the suspended driver. The Department of Revenue and Taxation shall have no authority to grant occupational or limited driving privileges to any person whose driving privileges have been suspended under this section, provided however, that an

individual may petition the Department of Revenue and Taxation for restoration of driving privileges by showing he made no such refusal to consent."

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

"Any person who knowingly drives a motor vehicle upon a highway at any time when his operator's or chauffeurs license or driving privilege is suspended or revoked, or when a license to drive a motor vehicle has been refused is guilty of a misdemeanor."

Section 4. Subsection 23405(b) of Title XXIV of the Government Code of Guam shall be amended to read:

"It is unlawful for any person who has eight one-hundredths of one percent (.08%), or more by weight, of alcohol in his blood, to drive or be in actual control of any vehicle."

Section 5. Subsection 23405(c) of Title 16, Guam Code Annotated shall be amended to read:

"A person convicted of violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall have the vehicle in which the offense was committed impounded by the Guam Police Department or its authorized agent at such locations as shall be designated by the Chief of Police, for the same period as the privilege to

operate a motor vehicle is suspended. The towing and impoundment of vehicles pursuant to provisions of this section shall be at the expense of the person charged with the violation, in addition to any fine or restitution imposed and ordered by the Court. Said impoundment shall only occur where the person convicted of violating this section is the registered owner, legal owner, or lessee of said vehicle. A person convicted of violating the provisions of this section shall be sentenced to a minimum of forty-eight (48) hours imprisonment in the Custody of the Department of Corrections or the Guam Police Department, however, that the Court may waive the mandatory minimum jail sentence for a first time offender and impose other alternative sentencing. In addition to any other sentence imposed, the Court shall impose a mandatory fine of not less than One Thousand Dollars (\$1,000.00) upon all offenders and shall require restitution be made to persons injured or for property damaged."

Section 6. Subsection 23405(d) of the Government Code shall be amended to read as follows:

"Any person convicted for a first offense under this section shall have his privilege to drive suspended for a minimum of ninety (90) days and a maximum of one hundred and eighty (180) days, but the Court may permit the person a limited privilege to drive if driving is required for that person to

maintain his livelihood. Any person convicted of a second offense of this section shall have his driving privilege suspended for a one hundred and eighty (180) day period, with no limited driving privileges for the first ninety (90) days from the date of conviction; the Court may grant occupational privileges for the remaining ninety (90) days under such circumstances and requirements as deemed necessary by the Court. Any person convicted of a third violation of this section shall have his driver's license suspended without occupational privileges for one (1) year from the date of conviction.

In those cases where limited driving privileges are granted by the Court, the Court shall issue a document to the individual granted limited privileges, signed by a Judge, approved by the prosecutor and attorney for the defense or the defendant, which shall specifically set forth the terms and conditions of such limited privileges. This document must be carried by the individual granted limited privileges at all time when he may be driving. Failure to produce such document upon the request of a peace officer of the Territory of Guam shall be considered a violation of Section 3110 of Title 16, Guam Code Annotated. Proof by the Defendant that he had been issued limited privileges but at that time did not have the required document in his possession shall not be a defense."

Section 7. Subsection 23405(e) of the Government Code is hereby amended to read:

"Any person convicted of violating any provisions of this section for a third time, or more, shall forfeit the vehicle in which the third offense, or more, was committed. At the time of arrest for any offense under this subsection, the vehicle in which the offense was committed shall be impounded by the Guam Police Department and released only upon the approval of the Prosecution Division of the Attorney General's Office when it is determined that the vehicle is not subject to asset forfeiture under this section. The forfeiture and seizure of the vehicle shall be enforced by the Guam Police Department and the vehicle shall be disposed of by public sale or auction at such times as the Guam Police Department may choose to conduct such sale or auction. The Chief of Police of the Guam Police Department shall to convey clear title as owner of said confiscated vehicles, subject to any perfected security interests in said vehicles.

In those cases where a vehicle is owned by a person other than the one convicted of three (3) or more violations of this section, the owner had no knowledge that the vehicle would be driven by an intoxicated person and where the owner had no knowledge of any prior violations of this section by the convicted person, the Court, instead of ordering the forfeiture of the vehicle, may suspend the convicted

person's driver's license for a period of a minimum of one (1) year and a maximum of five (5) years and no limited privilege to operate a motor vehicle shall be granted."

SECTION 8. Severability. If any of the provisions of this Act or the application thereof to any person or circumstance are held invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SUMMARY 1992

A. Traffic Accidents:

| | |
|---------------------------------|------|
| 1. Annual Total (All Accidents) | 8748 |
| a. Without Injuries | 7036 |
| b. With Injuries | 1712 |
| c. Persons Injured | 2483 |
| d. Fatalities | 26 |
| e. Alcohol-Related Fatalities | 16 |
| f. Alcohol-Related Accidents | 337 |

B. Driving Under the Influence (DUI):

| | |
|--|-----|
| 1. Annual Total (Arrests) | 957 |
| a. Male | 903 |
| b. Female | 54 |
| 2. Driving Under the Influence Accidents | 258 |

C. Citations Issued:

| | |
|--|-------|
| 1. Annual Total (All Citations Issued) | 56781 |
| a. Monthly Average | 4732 |
| b. Daily Average | 156 |
| 2. Accidents | 2511 |
| 3. Seatbelts | 3499 |
| a. Adults | 2346 |
| b. Child | 1153 |
| 4. Littering | 18 |
| 5. Radar | 9869 |
| 6. Moving | 31711 |
| 7. Non-Moving | 9173 |

COMPARATIVE SUMMARY 1992 VS. 1991

| | 1992 | | 1991 | | % CHANGE | # CHAN |
|--|--------------|---------------|--------------|---------------|---------------|-------------|
| | Number | Percent | Number | Percent | 92 VS. 91 | 92 VS. |
| A. Traffic Accidents | | | | | | |
| 1. Annual Total | 8,748 | 100.00% | 9,702 | 100.00% | -9.83% | -954 |
| a. Without Injuries | 7,036 | 80.40% | 7,976 | 82.20% | -11.79% | -940 |
| b. With Injuries | 1,712 | 19.60% | 1,726 | 17.80% | -0.81% | -14 |
| c. Persons Injured | 2,483 | | 2,463 | | +0.81% | +20 |
| d. Fatalities | 26 | 100.00% | 39 | 100.00% | -33.33% | -13 |
| e. Alcohol-Related Fatalities | 16 | 62.00% | 22 | 56.00% | -27.27% | -6 |
| f. Alcohol-Related Accidents | 337 | 4.00% | 498 | 5.00% | -32.33% | -161 |
| B. Driving Under the Influence (DUI) | | | | | | |
| 1. Annual Total (Arrests) | 957 | 100.00% | 604 | 100.00% | +58.44% | +353 |
| a. Male | 903 | 94.40% | 581 | 96.20% | +55.42% | +322 |
| b. Female | 54 | 5.60% | 23 | 3.80% | +134.78% | +31 |
| 2. Driving Under the Influence Accidents | 258 | 76.60% | 178 | 35.70% | +44.90% | +80 |
| C. Citations Issued: | | | | | | |
| 1. Annual Total (All Citations Issued) | 56,781 | 100.00% | 58,822 | 100.00% | -3.50% | -2,041 |
| a. Monthly Average | 4,732 | | 4,901 | | -3.50% | -169 |
| b. Daily Average | 156 | | 161 | | -3.10% | -5 |
| 2. Accidents | 2,511 | 4.40% | 2,807 | 4.80% | -10.60% | -296 |
| 3. Seatbelts | 3,499 | 6.10% | 3,423 | 5.80% | +2.20% | +76 |
| a. Adults | 2,346 | (4.10%) | 2,433 | (4.10%) | -3.60% | -87 |
| b. Child | 1,153 | (2.00%) | 990 | (1.70%) | +16.50% | +163 |
| 4. Littering | 18 | 0.00% | 76 | 0.10% | -76.30% | -58 |
| 5. Radar | 9,869 | 17.40% | 7,354 | 12.50% | +34.20% | +2515 |
| 6. Moving | 31,711 | 55.90% | 33,857 | 57.60% | -6.30% | -2146 |
| 7. Non-Moving | 9,173 | 16.20% | 11,305 | 19.20% | -18.90% | -2132 |
| D. Accidents by Classification (Top Three): | | | | | | |
| <u>Classification</u> | | | | | | |
| 1. Auto-Auto | 5,591 | 63.90% | 5,706 | 58.80% | -2.20% | -115 |
| 2. Auto Ran Off Roadway | 907 | 10.40% | 1,050 | 10.80% | -13.60% | -143 |
| 3. Auto-Auto Leaving Scene | 1,001 | 11.40% | 1,529 | 15.80% | -34.50% | -528 |
| | <u>7,499</u> | <u>85.70%</u> | <u>8,285</u> | <u>85.40%</u> | <u>-9.50%</u> | <u>-786</u> |
| E. Accidents By Day Of Week (Top Three): | | | | | | |
| <u>DAY</u> | | | | | | |
| 1. Monday | 1,368 | 15.60% | 1,304 | 13.40% | +4.90% | +64 |
| 2. Friday | 1,510 | 17.30% | 1,578 | 16.30% | -4.30% | -68 |
| 3. Saturday | 1,324 | 15.10% | 1,427 | 14.70% | -7.20% | -103 |
| | <u>4,202</u> | <u>48.00%</u> | <u>4,309</u> | <u>44.40%</u> | <u>-2.50%</u> | <u>-107</u> |

| F. Accidents By Hour Of The Day (Top Four): | 1992 | | 1991 | | % CHANGE 92 VS. 91 | # CHANGE 92 VS. 91 |
|---|--------------|---------------|--------------|---------------|-----------------------|-----------------------|
| | Number | Percent | Number | Percent | | |
| <u>HOUR</u> | | | | | | |
| 1. 7 A.M. - 9 A.M. | 1,342 | 15.30% | 1,425 | 14.70% | - 5.80% | - 83 |
| 2. 11 A.M. - 1 P.M. | 1,408 | 16.10% | 1,579 | 16.30% | -10.80% | -171 |
| 3. 2 P.M. - 4 P.M. | 1,812 | 20.70% | 2,078 | 21.40% | -12.80% | -266 |
| 4. 5 P.M. - 7 P.M. | 1,561 | 17.80% | 1,764 | 18.20% | -11.50% | -203 |
| | <u>6,123</u> | <u>70.00%</u> | <u>6,846</u> | <u>70.60%</u> | <u>-10.60%</u> | <u>-723</u> |

G. Accidents By Geographical Area:

AREA

| | | | | | | |
|-------------|--------------|----------------|--------------|----------------|----------------|-------------|
| 1. Northern | 2,148 | 24.60% | 2,131 | 21.90% | + 0.80% | + 17 |
| 2. Central | 5,628 | 64.30% | 6,419 | 66.20% | -12.30% | -791 |
| 3. Southern | 972 | 11.10% | 1,152 | 11.90% | -15.60% | -180 |
| | <u>8,748</u> | <u>100.00%</u> | <u>9,702</u> | <u>100.00%</u> | <u>- 9.80%</u> | <u>-954</u> |

VILLAGE (Top Five):

| | | | | | | |
|-------------|--------------|---------------|--------------|---------------|----------------|-------------|
| 1. Agana | 1,098 | 12.50% | 1,137 | 11.70% | - 3.40% | - 39 |
| 2. Dededo | 1,370 | 15.70% | 1,341 | 13.80% | + 2.20% | + 29 |
| 3. Harmon | 773 | 8.80% | 925 | 9.50% | -16.40% | -152 |
| 4. Tamuning | 1,775 | 20.30% | 2,000 | 20.60% | -11.30% | -225 |
| 5. Tumon | 724 | 8.30% | 783 | 8.10% | - 7.50% | - 59 |
| | <u>5,740</u> | <u>65.60%</u> | <u>6,186</u> | <u>63.70%</u> | <u>- 7.20%</u> | <u>-446</u> |

H. Accidents by Causes (Top Four):

CAUSES

| | | | | | | |
|---|--------------|---------------|--------------|---------------|----------------|-------------|
| 1. Insufficient Clearance/Following Too Close | 1,894 | 21.70% | 2,110 | 21.80% | -10.20% | -216 |
| 2. Failure To Yield/Disobeying Traffic Light/Sign | 1,682 | 19.20% | 1,880 | 19.40% | -10.50% | -198 |
| 3. Imprudent Driving/Speeding | 1,705 | 19.50% | 1,854 | 19.10% | - 8.00% | -149 |
| 4. Reckless Driving | 1,487 | 17.00% | 1,634 | 16.80% | - 9.00% | -147 |
| | <u>6,768</u> | <u>77.40%</u> | <u>7,478</u> | <u>77.10%</u> | <u>- 9.50%</u> | <u>-710</u> |

I. Accidents by Precinct, Beat, Village, Hour of Day, Day of Week, Shift Classification and Causes:

| A. <u>Precinct</u> | Years Compared | | | Monthly Average | | | Percent of Total | | | Percent Change | |
|-----------------------|----------------|-------------|-------------|-----------------|--------------|--------------|------------------|--------------|--------------|----------------|--------------|
| | 1992 | 1991 | 1990 | 1992 | 1991 | 1990 | 1992 | 1991 | 1990 | 92vs91 | 92vs90 |
| Northern | 2148 | 2131 | 2003 | 179.0 | 177.6 | 166.9 | 24.6 | 21.9 | 21.8 | + 0.8 | + 7.2 |
| Neighborhood | 3258 | 3655 | 3421 | 271.5 | 304.6 | 285.1 | 37.2 | 37.7 | 37.3 | -10.9 | - 4.8 |
| Central | 2370 | 2764 | 2553 | 197.5 | 230.3 | 212.8 | 27.1 | 28.5 | 27.8 | -14.3 | - 7.2 |
| Southern | 972 | 1152 | 1204 | 81.0 | 96.0 | 100.3 | 11.1 | 11.9 | 13.1 | -15.6 | -19.3 |
| SUBTOTAL | 8748 | 9702 | 9181 | 729.0 | 808.5 | 765.1 | 100.0 | 100.0 | 100.0 | - 9.8 | - 4.7 |
| B. <u>Beat</u> | | | | | | | | | | | |
| 1 | 289 | 316 | 298 | 24.0 | 26.3 | 24.8 | 3.3 | 3.2 | 3.2 | - 8.5 | - 3.0 |
| 2 | 194 | 185 | 258 | 16.2 | 15.4 | 21.5 | 2.2 | 1.9 | 2.8 | + 4.9 | -24.8 |
| 3 | 512 | 399 | 396 | 42.7 | 33.3 | 33.0 | 5.9 | 4.1 | 4.3 | +28.3 | +29.3 |
| 4 | 281 | 407 | 309 | 23.4 | 33.9 | 25.8 | 3.2 | 4.2 | 3.4 | -31.0 | - 9.1 |
| 5 | 872 | 824 | 742 | 72.7 | 68.7 | 61.8 | 10.0 | 8.5 | 8.1 | + 5.8 | +17.5 |
| SUBTOTAL | 2148 | 2131 | 2003 | 179.0 | 177.6 | 166.9 | 24.6 | 21.9 | 21.8 | + 0.8 | + 7.2 |
| 6 | 943 | 923 | 791 | 78.6 | 76.9 | 66.0 | 10.8 | 9.5 | 8.6 | + 2.2 | +19.2 |
| 7 | 488 | 593 | 592 | 40.7 | 49.4 | 49.3 | 5.5 | 6.1 | 6.5 | -17.7 | -17.6 |
| 8 | 893 | 1092 | 1073 | 74.4 | 91.0 | 89.4 | 10.2 | 11.3 | 11.7 | -18.2 | -16.8 |
| 9 | 934 | 1047 | 965 | 77.8 | 87.3 | 80.4 | 10.7 | 10.8 | 10.5 | -10.8 | - 3.2 |
| SUBTOTAL | 3258 | 3655 | 3421 | 271.5 | 304.6 | 285.1 | 37.2 | 37.7 | 37.3 | -10.9 | - 4.8 |
| 10 | 410 | 407 | 478 | 34.2 | 33.9 | 39.8 | 4.7 | 4.2 | 5.2 | + 0.7 | -14.3 |
| 11 | 321 | 330 | 351 | 26.8 | 27.5 | 29.3 | 3.7 | 3.4 | 3.8 | - 2.7 | - 8.6 |
| 12 | 394 | 393 | 325 | 32.8 | 32.8 | 27.1 | 4.5 | 4.1 | 3.5 | + 0.3 | +21.2 |
| 13 | 230 | 517 | 449 | 19.2 | 43.0 | 37.4 | 2.6 | 5.3 | 4.9 | -55.5 | -48.8 |
| 14 | 354 | 195 | 192 | 29.5 | 16.3 | 16.0 | 4.0 | 2.0 | 2.1 | +81.5 | +84.4 |
| 15 | 661 | 922 | 758 | 55.0 | 76.8 | 63.2 | 7.6 | 9.5 | 8.3 | -28.3 | -12.8 |
| SUBTOTAL | 2370 | 2764 | 2553 | 197.5 | 230.3 | 212.8 | 27.1 | 28.5 | 27.8 | -14.3 | - 7.2 |
| 16 | 364 | 517 | 486 | 30.3 | 43.0 | 40.5 | 4.2 | 5.4 | 5.3 | -29.6 | -25.1 |
| 17 | 149 | 159 | 143 | 12.4 | 13.3 | 11.9 | 1.7 | 1.6 | 1.5 | - 6.3 | + 4.2 |
| 18 | 157 | 149 | 200 | 13.1 | 12.4 | 16.7 | 1.8 | 1.5 | 2.2 | + 5.4 | -21.5 |
| 19 | 125 | 139 | 155 | 10.4 | 11.6 | 12.9 | 1.4 | 1.4 | 1.7 | -10.1 | -19.4 |
| 20 | 77 | 72 | 118 | 6.4 | 6.0 | 9.8 | 0.9 | 0.8 | 1.3 | + 6.9 | -34.8 |
| 21 | 100 | 116 | 102 | 8.3 | 9.7 | 8.5 | 1.1 | 1.2 | 1.1 | -13.8 | - 2.0 |
| SUBTOTAL | 972 | 1152 | 1204 | 81.0 | 96.0 | 100.3 | 11.1 | 11.9 | 13.1 | -15.6 | -19.3 |
| GRAND TOTAL | 8748 | 9702 | 9181 | 729.0 | 808.5 | 765.1 | 100.0 | 100.0 | 100.0 | - 9.8 | - 4.7 |

CALIFORNIA HIGHWAY SAFETY DEPARTMENT BLOOD ALCOHOL CHART

Showing estimated percentage of alcohol in the blood by
number of drinks in relation to body weight

| DRINKS | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|----------|------|------|------|------|------|------|------|------|------|------|------|------|
| 100 lbs. | .038 | .075 | .113 | .150 | .188 | .225 | .263 | .300 | .338 | .375 | .413 | .450 |
| 120 lbs. | .031 | .063 | .094 | .125 | .156 | .188 | .219 | .250 | .281 | .313 | .344 | .375 |
| 140 lbs. | .027 | .054 | .080 | .107 | .134 | .161 | .188 | .214 | .241 | .268 | .295 | .321 |
| 160 lbs. | .023 | .047 | .070 | .094 | .117 | .141 | .164 | .188 | .211 | .234 | .258 | .281 |
| 180 lbs. | .021 | .042 | .063 | .083 | .104 | .125 | .146 | .167 | .188 | .208 | .229 | .250 |
| 200 lbs. | .019 | .038 | .056 | .075 | .094 | .113 | .131 | .150 | .169 | .188 | .206 | .225 |
| 220 lbs. | .017 | .034 | .051 | .068 | .085 | .102 | .119 | .136 | .153 | .170 | .188 | .205 |
| 240 lbs. | .016 | .031 | .047 | .063 | .078 | .094 | .109 | .125 | .141 | .156 | .172 | .183 |

HAS ALCOHOL AFFECTED YOUR DRIVING ABILITY?

The % of alcohol in your blood will tell you. This % can be estimated by COUNTING YOUR DRINKS (1 drink = 1 volume oz. of 100 proof alcohol or 1-12 oz. bottle of beer.)

Use ALCO-CHART above. Under number of DRINKS and opposite body weight find the Blood Alcohol listed.

SUBTRACT from this number the % of alcohol "burned up" during the time elapsed since your first drink.

No. Hours Since 1st Drink

SUBTRACT

| 1 | 2 | 3 | 4 | 5 | 6 |
|-------|-------|-------|-------|-------|-------|
| .015% | .030% | .045% | .060% | .075% | .090% |

EXAMPLE: 180 lb. man - 8 drinks in 4 hours

167% minus .060% = .107%

THIS REMAINDER IS AN ESTIMATE OF THE % OF ALCOHOL IN YOUR BLOOD.



Office of the Attorney General
Territory of Guam
Prosecution Division

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Attorney General

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Donald L. Paillette
Chief Deputy Attorney General

March 10, 1993

Frances Tydingco-Gatewood
Chief Prosecutor

Honorable Senator Pilar C. Lujan
Chairman
Committee on Judiciary & Criminal Justice
Twenty-second Guam Legislature
Agana, Guam

Dear Senator Lujan:

After examining the proposed Safe Streets Act of 1993, Bill No. 244, the Prosecutor's Office supports the bill. The .08 per cent B.A.C. and the Administrative License Revocation provisions put Guam at the forefront of DWI enforcement and prosecution. There are several suggestions I would like to make which may not have been included in my oral testimony before your committee.

1. Administrative License Revocation

With regard to Administrative License Revocation for individuals refusing to submit to B.A.C. testing addressed in Bill No. 244 and Bill No. 186, our office completely supports the intent of those bills. However, in order to provide the Department of Revenue and Taxation discretion in developing rules and regulations governing this area, we suggest a task force be appointed. The task force should include individuals from Revenue and Taxation, Guam Police Department, the Prosecution Division of the Attorney General's Office and the Department of Highway Safety, Superior Court of Guam. The purpose of the task force would be to develop and implement appropriate procedures through the Administrative Adjudication Law which take into account the available resources of the Department of Revenue and Taxation.

Just as a matter of form, Section 3 on page 2, line 2, should read as follows:

COMMONWEALTH NOW!

Upon refusal to submit to a test any person holding a driver's license or permit issued by the Territory of Guam requested to submit to a test as provided in subsection (o)(1), above,

2. Operating with a suspended or revoked license.

In order to effectively deter offenders from driving while their license is suspended or revoked, we suggest the offense be a misdemeanor rather than the proposed petty misdemeanor.

3. Period of License Suspension and Impoundment of Vehicle

For first offenders, the period of license suspension should be between ninety (90) days and one (1) year. Second offenders should have their licenses suspended for at least one (1) year and should not be entitled to occupational privileges. Likewise, those individuals committing third offenses within a limited period should have their license suspended in excess of one (1) year.

The Guam Police Department temporarily impounds all vehicles involved in alcohol related traffic offenses and we support this as it gets the vehicle off the highway even if the offender is released after arrest and processing. However, impoundment of a vehicle during the entire period that an individual's privilege to operate a vehicle is suspended is not necessary for first offenders. Also, there may be problems where the vehicle is jointly owned or a family's sole means of transportation.

As a matter of form, Section 7, page 3, line 7, should read as follows:

conviction. In those cases where limited driving privileges are granted by ...

4. Jail Sentences

Second and third offenders are currently serving mandatory jail sentences under our office's and the court's guidelines. We recommend that provisions for jail sentences be included in the legislation.

5. Vehicle Forfeiture

Our office views vehicle forfeiture as an extremely effective method of deterrence. However, we want to ensure that the forfeiture does not deprive a defendant's right to due process. Where a third offender's vehicle is seized, the vehicle should be disposed of in accordance with those provisions of law relating to assets forfeiture.

Forfeiture problems may arise where a vehicle is jointly owned or a family's sole means of transportation. The court should be given latitude in these areas.

We are submitting a revision of the proposed DWI law which incorporates our suggestions and our proposed negligent homicide law. Hopefully this will be of assistance to your committee in enacting the most comprehensive DWI law possible.

Sincerely yours,



FRANCES TYDINGCO-GATEWOOD

9 G.C.A. § 16.70(a)

VEHICULAR HOMICIDE

A person is guilty of Vehicular Homicide if, while driving a vehicle, he does any act forbidden by law in the driving of the vehicle or if he negligently drives a vehicle, which act or negligence proximately causes death to any person other than the driver.

In proving that the person did any act forbidden by law, it shall not be necessary to prove that the person possessed a culpable mental state as allowed in section 4.45 of this Title.

For purposes of this section, "negligence" is defined as the failure to use the ordinary or reasonable care which a person of ordinary prudence would use in order to avoid injury to himself or to others under similar circumstances.

Vehicular Homicide is a felony of the third degree and shall be punishable by a term of incarceration of _____.

9 G.C.A. § 16.70(b)

VEHICULAR HOMICIDE WHILE INTOXICATED

A person is guilty of Vehicular Homicide While Intoxicated if, while driving a vehicle in violation of section 23405(a) or (b) of Title 16 of the Government Code, he does any act forbidden by law in the driving of the vehicle or if he negligently drives a vehicle, which act or negligence proximately causes death to any person other than the driver.

In proving that the person did any act forbidden by law, it shall not be necessary to prove that the person possessed a culpable mental state as allowed in Section 4.45 of this Title.

For purposes of this section, "negligence" is defined as the failure to use the ordinary or reasonable care which a person of ordinary prudence would use in order to avoid injury to himself or to others under similar circumstances.

Vehicular Homicide While Intoxicated is a felony of the second degree and shall be punishable by a term of incarceration of _____.