



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

JUL 26 1996

The Honorable Judith Won-Pat Borja
Acting Lt. Governor and Acting Speaker
Twenty-Third Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT

Received By Loch

Time 2:45 p.m.

Date 7/26/96

Dear Speaker Won-Pat Borja:

Enclosed please find a copy of Substitute Bill No. 449 (LS), "AN ACT TO REPEAL AND REENACT §25.15(b) OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT", which I have **signed** into law today as **Public Law No. 23-114**.

Until today, Guam law for crimes of criminal sexual conduct in the first degree applied one of the following penalties:

- 1) a 5 to 20 year prison sentence;
- 2) a 3 to 15 year prison sentence for first time offenders; or
- 3) an additional authorization to sentence a person to life in prison with no work release or educational release. Parole was still available.


This new legislation mandates that persons convicted of criminal sexual conduct in the first degree spend 15 years in prison with no possibility of work release, educational release, or parole. Most situations defined as criminal sexual conduct in the first degree are heinous crimes. For such persons, a 15 year sentence would be appropriate.

In reviewing other jurisdictions, many statutory definitions of criminal sexual conduct in the first degree include situations wherein the perpetrator is related to the victim, is a member of the household, or uses coercion, force, has a weapon, or the victim is a mentally incapacitated or

physically helpless person. The situation which was formerly known as "statutory rape", wherein what may be voluntary sexual behavior occurs between unrelated and otherwise competent persons, although one person is under age and may even be the aggressor, is usually treated under a separate statute. Guam may want to amend our statutes to treat this latter situation separately from the other situations involving criminal sexual conduct.

A copy of the Public Law has also been delivered to the Office of the Legislative Secretary.

Very truly yours,



Carl T. C. Gutierrez
Governor of Guam

Attachment

231363



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

JUL 26 1996

The Honorable Sonny L. Orsini
Acting Legislative Secretary
Twenty-Third Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910


OFFICE OF THE LEGISLATIVE SECRETARY		
ACKNOWLEDGMENT RECEIPT		
Received By	<u>Anne</u>	
Time	<u>11:38 am</u>	
Date	<u>29 July 96</u>	

Dear Mr. Legislative Secretary:

Enclosed please find a copy of Governor's message and Substitute Bill No. 449 (LS), "AN ACT TO REPEAL AND REENACT §25.15(b) OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT", which I have signed into law today as **Public Law No. 23-114**.

A copy has also been delivered to the Office of the Speaker.

Very truly yours,


Carl T. C. Gutierrez
Governor of Guam

Attachments

231385

COMMITTEE ON RULES

Rec'd by: AM Date: 7/26/96 Time: 9:30

Routing:	Date:	Sen's Ini.
_____	_____	_____
_____	_____	_____
_____	_____	_____
Action: _____		

TWENTY-THIRD GUAM LEGISLATURE
1996 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 449 (LS), "AN ACT TO REPEAL AND REENACT §25.15(b) OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT," was on the 11th day of July, 1996, duly and regularly passed.



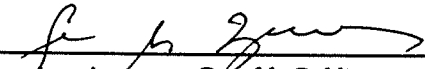
DON PARKINSON
Speaker

Attested:



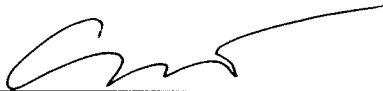
JUDITH WON PAT-BORJA
Senator and Legislative Secretary

This Act was received by the Governor this 16th day of July,
1996, at 10:28 o'clock A.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 7-26-96

Public Law No. 23-114

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) REGULAR SESSION

Bill No. 449 (LS)

As substituted by the Committee on Judiciary,
Criminal Justice and Environmental Affairs
And further substituted on the floor

Introduced by:

E. Barrett-Anderson
A. C. Blaz
J. M. S. Brown
T. C. Ada
J. P. Aguon
F. P. Camacho
M. C. Charfauros
H. A. Cristobal
M. Forbes
A. C. Lamorena V
C. Leon Guerrero
L. Leon Guerrero
T. S. Nelson
S. L. Orsini
V. C. Pangelinan
D. Parkinson
J. T. San Agustin
A. L. G. Santos
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

AN ACT TO REPEAL AND REENACT §25.15(b) OF
TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO
MANDATORY MINIMUM SENTENCING FOR
PERSONS FOUND GUILTY OF CRIMINAL SEXUAL
CONDUCT.

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

1 **Section 1.** Subsection (b) of §25.15 of Title 9, Guam Code Annotated, is
2 hereby repealed and reenacted to read as follows:

3 “(b) Criminal sexual conduct in the first degree is a felony in the
4 first degree. Any person convicted of criminal sexual conduct under
5 §25.15(a) shall be sentenced to a minimum of fifteen (15) years
6 imprisonment, and may be sentenced to a maximum of life
7 imprisonment without the possibility of parole. Any person convicted of
8 criminal sexual conduct in the first degree shall not be eligible for work
9 release or educational programs outside the confines of prison nor shall
10 the provisions under §80.31 apply.”

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) Regular Session

Date: 7/11/96

VOTING SHEET

Bill No. 449
 Resolution No. _____
 Question: _____

NAME	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>ABSENT/ OUT DURING ROLL CALL</u>
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.				✓
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL 20 0 0 1

CERTIFIED TRUE AND CORRECT:

 Recording Secretary

23-114

Senator Mark C. Charfauros

Chairman

Committee on Judiciary, Criminal Justice, and Environmental Affairs Twenty-Third Guam Legislature

Ada's Commercial and Professional Center
138 East Marine Drive, Suite 101C-Annex
Agana, Guam 96910

Tel: (671) 472-3342/3/5
Fax: (671) 472-3440
E-Mail: markchar@uog9.uog.edu

June 6, 1996

SPEAKER DON PARKINSON
Twenty-Third Guam Legislature
155 Hesler St.
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Judiciary, Criminal Justice and Environmental Affairs to which was referred **Bill No. 449**, wishes to report back to the Legislature with its recommendation **To Pass Bill 449 As substituted by the Committee** "AN ACT TO AMEND TITLE 9 GCA, RELATIVE TO MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR."

The voting record is as follows:

TO PASS

6

NOT TO PASS

0

ABSTAIN

0

TO PLACE IN INACTIVE FILE

0

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.

Attachments.


MARK C. CHARFAUROS

Senator Mark C. Charfauros

Chairman

Committee on Judiciary, Criminal Justice, and Environmental Affairs
Twenty-Third Guam Legislature

Ada's Commercial and Professional Center
138 East Marine Drive, Suite 101C-Annex
Agana, Guam 96910

Tel: (671) 472-3342/3/5
Fax: (671) 472-3440
E-Mail: markchar@uog9.uog.edu

June 6, 1996

MEMORANDUM

TO: Members

FROM: Chairman

SUBJECT: Committee Report - **Bill No. 449 As substituted by the Committee** "AN ACT TO AMEND TITLE 9 GCA, RELATIVE TO MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR."

Transmitted herewith for your information and action is the Committee on Judiciary, Criminal Justice and Environmental Affairs' Report on the subject Bill.

The narrative report is accompanied by the following:

1. Original Bill 449; Bill 449 As substituted by the Committee;
2. Committee Voting Sheet;
3. Testimony and Sign-in Sheet
4. Public Hearing Notice.

Should you have any questions on the narrative report or the accompanying documents, I would be most happy to answer any of them.

Please take the appropriate action on the attached voting sheet and return the documents to my office for transmittal to the other members.




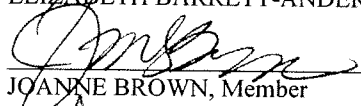
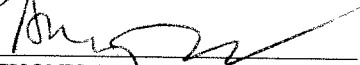
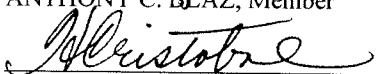


Your attention and cooperation in this matter is greatly appreciated.


MARK C. CHARFAUROS

Attachments.

**COMMITTEE ON JUDICIARY, CRIMINAL JUSTICE AND
ENVIRONMENTAL AFFAIRS
23rd Guam Legislature
VOTING RECORD**

Bill No. 449 As substituted by the Committee "AN ACT TO AMEND TITLE 9 GCA, RELATIVE TO MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR."

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE FILE</u>
 MARK C. CHARFAUROS, Chairman	✓	—	—	—
 JUDITH WONPAT BORJA, Vice-Chairperson	✓	—	—	—
THOMAS C. ADA, Member	—	—	—	—
 ELIZABETH BARRETT-ANDERSON, Member	✓	—	—	—
 JOANNE BROWN, Member	✓	—	—	—
 ANTHONY C. BLAZ, Member	✓	—	—	—
 HOPE CRISTOBAL, Member	✓	—	—	—
A. TONY LAMORENA, Member	—	—	—	—
LOU LEON GUERRERO, Member	—	—	—	—
 TED S. NELSON, Member	—	—	—	—
VICENTE C. PANGELINAN, Member	—	—	—	—
ANGEL L.G. SANTOS, Member	—	—	—	—
 DON PARKINSON, Ex-Officio Member	✓	—	—	—

COMMITTEE ON JUDICIARY, CRIMINAL
JUSTICE AND ENVIRONMENTAL
AFFAIRS

Twenty-Third Guam Legislature

COMMITTEE REPORT

on

Bill No. 449

As substituted by the Committee

“AN ACT TO AMEND TITLE 9 GCA, RELATIVE TO MANDATORY MINIMUM
SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT
WITH A MINOR.”

February 21, 1996

I. OVERVIEW

The Committee on Judiciary, Criminal Justice and Environmental Affairs scheduled a public hearing on February 21, 1996 at 9:30 a.m. at the Legislative Public Hearing Room. Public notice was announced on the February 15, 1996 issue of the PDN. Members present were:

Senator Mark C. Charfauros, Chairman
Senator Ben Pangelinan
Senator Ted Nelson
Senator Elizabeth Barrett-Anderson
Senator Joanne Brown
Senator Lou Leon Guerrero

Appearing before the Committee to testify on the bill were:

Phil Tydingco, Legal Counsel, Guam Police Department, **oral**.
Calvin E. Holloway, Sr., Attorney General, **written**.

II. SUMMARY OF TESTIMONY

Phil Tydingco, Legal Counsel, Guam Police Department, testified in support of Bill 449. He stated that Bill 449 would send a strong message to perpetrators by providing stricter penalties for criminal sexual conduct against minors. He further stated that the penalties would provide a deterrent to such crimes.

Senator Barrett-Anderson, author of Bill 449, stated that other sections involving sexual penetration of minors should also provide for minimum sentence guidelines. Mr. Tydingco responded that amendments to such sections would be consistent with the original amendment provided by Bill 449.

Calvin E. Holloway, Sr., Attorney General, **written, attached.**

III. FINDING AND RECOMMENDATION

The Committee finds that criminal sexual conduct against minors is an abhorrent crime which must be deterred through stricter penalties. The Committee finds that there has recently been several high-profile cases of criminal sexual conduct against minors. The Committee further finds that such crimes have become prevalent on Guam, resulting in extreme physical and psychological damage to the young victims. The Committee finds that Bill 449 As substituted by the Committee would set minimum sentence guidelines for crimes involving sexual penetration of minors. The Committee finds that such sentence guidelines would ensure that the individuals responsible for these acts are punished appropriately. The Committee further finds that the sentence guidelines would send a strong message to the community that those responsible for these crimes will serve stiff and lengthy prison sentences.

Accordingly, the Committee on Judiciary, Criminal Justice and Environmental Affairs, to which was referred **Bill No. 449**, does hereby submit its findings and recommendation to the Twenty-Third Guam Legislature **TO DO PASS Bill No. 449 As substituted by the Committee** "AN ACT TO AMEND TITLE 9 GCA, RELATIVE TO MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR."



COMMITTEE ON RULES

Twenty-Third Guam Legislature
155 Hesler St., Agana, Guam 96910



December 12, 1995

MEMORANDUM

TO: Chairman, Committee on Judiciary, Criminal Justice
and Environmental Affairs

FROM: Chairman, Committee on Rules

SUBJECT: Referral - Bill No. 449

The above Bill is referred to your Committee as the principal committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.




SONNY LUJAN ORSINI

Attachment:

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) REGULAR SESSION

BILL NO. 449

Introduced by:

Elizabeth Barrett-Anderson 

AN ACT TO AMEND TITLE 9 GUAM CODE ANNOTATED
RELATIVE TO MANDATORY MINIMUM SENTENCING
FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL
CONDUCT WITH A MINOR

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

3 Section 1. Section 25.10(b) of Title 9 Guam Code Annotated is
4
5 hereby repealed and reenacted to read as follows:
6

7 "(b) Criminal sexual conduct in the first degree is a felony
8
9 in the first degree. Any person convicted of criminal sexual
10
11 conduct under Section 25.10 (a) (1) or (2) shall be sentenced
12
13 to a minimum of twenty-five (25) years imprisonment to
14
15 life without possibility of parole. Any person convicted of
16
17 criminal sexual conduct under Section 25.10 (3) through (7)
18
19 may be sentenced to life imprisonment. Any person convicted
20
21 of first degree criminal sexual conduct shall not be eligible for
22
23 work release or educational programs outside the confines of
24
prison."

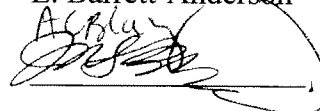
**TWENTY-THIRD GUAM LEGISLATURE
1996 (SECOND) REGULAR SESSION**

Bill No. 449

As substituted by the Committee on Judiciary,
Criminal Justice and Environmental Affairs

Introduced by:

E. Barrett-Anderson



**AN ACT TO AMEND TITLE 9 GUAM CODE ANNOTATED, RELATIVE TO
MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF
CRIMINAL SEXUAL CONDUCT WITH A MINOR.**

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

2 **Section 1. Section 25.15(b) of Title 9 GCA is hereby repealed and reenacted to read as**
3 **follows:**

4 “(b) Criminal sexual conduct in the first degree is a felony in the first degree. Any person
5 convicted of criminal sexual conduct under Section 25.15(a) (1) or (2) shall be sentenced to a
6 minimum of fifteen (15) years imprisonment and may be sentenced to a maximum of life
7 imprisonment without the possibility of parole. Any person convicted of criminal sexual conduct
8 under Section 25.15(a) (3) through (7) may be sentenced to life imprisonment. Any person
9 convicted of criminal sexual conduct in the first degree shall not be eligible for work release or
10 educational programs outside the confines of prison nor shall the provisions under Section 80.31
11 apply.”

12 **Section 2. Section 25.30(b) of Title 9 GCA is hereby amended to read as follows:**

13 “(b) Criminal sexual conduct in the fourth degree is a felony of the third degree, [~~except for~~
14 ~~first time offenders it is a misdemeanor~~].”



Calvin E. Holloway, Sr.
Hiniñat Abugao
2493
Attorney General

Phone: (671) 475-3324
Telefax: (671) 472-

Ufisinan Hiniñat Abugao
Tiritorian Guåhan

Gus F. Diaz
Atkáñ, Sigundo Hiniñat Abugao
Chief Deputy Attorney General

Office of the Attorney General
Territory of Guam

March 6, 1996

The Honorable Mark C. Charfauros
Chairman, Committee on Judiciary & Criminal Justice
and Environmental Affairs
Twenty-Third Guam Legislature
Ada's Commercial & Professional Center
138 East Marine Drive, Suite 101C-Annex
Agana, Guam 96910

Re: Bill Nos. 449, 487, and 489

Dear Senator Charfauros:

Buenas yan Saluda!

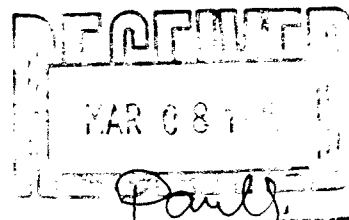
BILL NO. 449

We thank you for the opportunity to comment on Bill 449, which addresses an increased mandatory minimum prison term for certain sex offenders. It has been reviewed by various members of the Prosecution Division, including Alberto Tolentino, Joseph Tock and Andy Artero-Boname.

The gist of Bill 449, which is to stiffen penalties for the most egregious sex offenses, is viewed favorably by the prosecutors. However, you should be aware that the imposition of mandatory minimum terms of 25 years will result in some defendants declining to plead guilty where they otherwise would do so. This is likely to result in some "unjust" acquittals and the occasional return of sexual offenders to the streets without punishment or even treatment. CSC cases are particularly problematic in that the credibility of the victim is an essential factor in nearly every case, as there are typically



Commonwealth Now!



no other witnesses.

It is not unusual for victims to become uncooperative during the process of trial or even to retract their complaints beforehand under the pressure of family members. While prosecutors go to great lengths to guard against such problems, it is often very difficult to establish proof beyond a reasonable doubt. There will, in some cases, be a downside to the mandatory twenty-five when weak cases are forced to trial by its existence.

The mandatory minimum of 25 years may also operate harshly in some cases, especially in statutory rape situations, although prosecutors could elect to charge a penetration as contact under §25.20, if the situation warrants. Perhaps, it is now time to specifically address consensual sex between adolescents to reduce the seriousness of statutory rape where both are under age, or where the difference in their ages is relatively slight. A number of jurisdictions have such provisions. While we certainly do not wish to encourage adolescent sexual conduct, it might be extreme to put a 16 year old into jail for twenty-five years because he or she had a partner about to turn 14.

Your committee might consider a set of flexible sentencing guidelines, including the defendant's admission of culpability as a mitigating factor, among various aggravating factors; as an alternative to the twenty-five year mandatory minimum. In addition, there is a need for sentencing guidelines applicable throughout Title 9 to make sentencing more uniform and evenhanded generally.

Moving to the specifics of the Bill, there appears to be a small typographical error in it. §25.10(b) (the section repealed and re-enacted by 449) is the section relating to the defense of ignorance as to the victim's age, not the sentencing provision for 1st degree CSC. It appears that the Bill is intended to replace §25.15(b). The content of the Bill should also be corrected to reference §25.15, instead of 25.10, throughout.

We would recommend a slight change in the substantive wording of the Bill. The phrase (at lines 11-15) "shall be sentenced to a minimum of twenty-five (25) years imprisonment to life without possibility of parole" might be expanded to read: "shall be sentenced to a minimum of twenty-five (25) years imprisonment and may be sentenced to a maximum of life imprisonment without possibility of parole." The section could also be amended to include the language in the present 25.15(b), "notwithstanding any other provision of law"- which makes oblique reference to the general sentencing provisions at 9 GCA §§80.30 and 80.31. The revision on 25.15(b) should make clear on its face that it is not establishing the entirety of the sentence available to the court, it is just announcing minimum and maximum jail terms. This is essential because, if 25.15 were read otherwise, it would preclude fines, restitution, and other forms of sentencing generally available for a first degree felony.

Bill 449 would benefit from the addition of special parole provisions applicable to all first and second degree felony sex offenses. Because pedophiles and some other sex offenders have a particularly high rate of recidivism they are in special need of long term supervision. [According to Dr. Kiffer, the Court psychologist, Arizona has adopted a lifetime probation term to deal with certain sexual offenders.] Many of the most serious crimes in Title 9 already have special parole provisions; for example, 9 GCA §22.20(b) (kidnapping). We request that you also consider the addition of such a provision to all first and second degree felonies, and would recommend as well that the definition of "special parole", as used throughout the code, be made uniform with that employed in 9 GCA §80.33(d). That section specifically defines special parole but limits the conditions applicable to it to its use under 80.33.7 and 80.33.9. A recent Ninth Circuit decision held that the definition contained there does not extend to the use of the term "special parole" elsewhere in Title 9, a determination which reduces the value of special parole. This could be fixed by legislation specifying that the definition has universal application throughout Title 9.

Finally, we were asked to comment on Senator Barrett-Anderson's proposed Bill 449 which would alter the present sentences for First and Third degree Criminal Sexual Conduct. While we agree that acts of Criminal Sexual Conduct against minors should be harshly dealt with, we are always bothered by mandatory sentences. A mandatory sentence does not take into account the need of the prosecution to address each case on its own merits considering the strength of the case, the wishes and needs of the victim and the fact that with the ability to "bargain" the case there is often nothing left for the defendant except trial. We have spoken with Ed Bitanga, Director, Department of Corrections, who assures us that he supports the bill and will find the space for these offenders if necessary. There is a need, however, that these offenders be required to participate in mandatory counseling program and it would be desirable to have a required term of parole following the mandatory sentence which includes counseling.

BILL NO. 487

Section 1 changes the issuing agency for Guam Identification Cards from the Department of Revenue and Taxation (DRT) to the Guam Police Department (GPD). This change legally recognizes what has existed in fact for many years. Although the old statute states that GovGuam ID cards were to be issued by DRT they have been issued for years by GPD. It further provides that a fee may be charged for the ID card. Formerly the cards were issued for free. This section has been needed for a long time and we supported it.

Section 2 provides that fees may be charged for certain services related to the issuance of firearms activities, i.e., firearms identification cards, registration for firearms,

dealers, shooting galleries, repairers of firearms, etc. Some of these fees have been permitted in the past and others are long overdue. We support it.

Sections 3, 4, 5 and 6 remove the statutorily fixed sums for boating fees and replace them by allowing the fees to be promulgated by GPD pursuant to the Administrative Adjudication Law (AAL). This is appropriate since these fees have been kept arbitrarily low for many years due to the fee being statutorily created rather than subject to review and adjustment through the Administrative Adjudication Law.

Section 7. This section is an impermissible delegation of legislative authority to an agency. Section 7 purports to remove the previous statutory determination that a violation of certain sections of the Boating laws shall be punished by a fine of not more than \$10.00 nor more than \$50.00 and replace it with new language allowing the amount of the fine to be set by GPD after complying with the Administrative Adjudication Law. The setting of penalties is solely within the province of the Legislative Branch. AmJur on Administrative Law sets for the principal in this manner at §127 as follows:

To declare what shall constitute a crime and how it shall be punished is a power vested solely and exclusively in the legislature, and it may not be delegated to any other body or agency. An administrative agency may not be empowered to impose penalties for violations of duties which it creates under a statute permitting it to make rules, even though the legislature fixes the maximum of the penalty. However, the legislature may validly provide a criminal or penal sanction for the violation of the rules and regulations which it may empower administrative agencies to enact.

In this particular situation, finding a person guilty of an infraction committed under certain sections of the Boating laws has been statutorily designated a violation by 10 GCA §69129. 9 G.C.A. §80.50 provides that a person convicted of an offense which is a violation may be sentenced to a fine not exceeding \$500. That is the statutorily provided penalty. If GPD wishes to set specific amounts it believes appropriate for certain offenses, the proper means of achieving this is to furnish to the Superior Court Traffic Violations Bureau a recommended Schedule of Fines for those offenses which the Court may then have approved by the Judicial Council. Then, when a citation is issued for a specific offense, the court follows the procedures set forth in the Traffic Court Rules in determining the disposition of the charge. The Court may impose the recommended fine or may sentence up to the full extent allowed by 9 G.C.A. §80.50.

NOTE: This is distinguishable from the ability of the Legislature to delegate the establishment of FEES for certain services.

Section 8 is a new law which provides for the establishment of certain fees related to

private security agencies. Section 8 (a) provides that a fee may be charged for the Temporary Firearms Identification Cards issued to Private Security Officers. This fee has not been charged in the past and is an appropriate fee. However, the proposed section refers to the card as being issued pursuant to 10 GCA §71103(f). That section merely defines the term and is not the section which authorizes its issuance. The correct section to be cited is 10 GCA § 71201 which actually authorizes the Chief of Police to issue the card.

Sections (b) and (c) of the new law would set fees for the filing of training records and for the approval of certified firearms training officers for private security agencies.

We support this section.

Sections 8-11. These sections purport to allow the Chief of Police to issue permits, set conditions and charge fees for the use of "highways" for uses other than regular traffic. What they are apparently attempting to do is allow the police to recover the costs of providing police services for funerals, parades, etc. Unfortunately, there are a number of problems with this section as written and we cannot support this section unless rewritten to address these concerns. First, the term "highway" is not defined beyond the general definition found in Title 16 (which this bill proposes to amend). That is a very general definition including "way or places of whatever nature open to the use of the public for the purposes of vehicular traffic". This could arguably include parks and other areas not traditionally considered highways. However, this is not the most important problem with the statute. The biggest difficulty lies with section 3352. In that section the Chief of Police is given complete discretion to determine whether the issuance of the permit would be "unduly dangerous or unduly disruptive to other users of the highways". Then, after the permit is either denied or granted, the chief may impose reasonable restrictions as to time, place or manner of usage. The correct method of achieving the desired result is to grant (or deny) all permits by the same clearly defined constitutionally permissible standards and then impose reasonable time, place and manner restrictions on the permit. To give unfettered freedom to the police chief to grant or deny permits would not be constitutionally permissible. That is not to say that certain administrative conditions could not be imposed on all applicants (i.e., applications required, fees, reasonable advance notice, etc.) but they would have to be imposed across the board and not left to the discretion of the chief. It would also be permissible to ban all uses of the highways except those for which highways are traditionally used but once we start permitting special uses, i.e., for parades, marches, processions, etc. we must be particularly wary that we do not unconstitutionally discriminate against any person or group. To give such complete discretion to the police chief to determine who can get a permit would invite constitutional challenges from the first group denied use of the highway.

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Section 12 provides statutorily for Police Clearances which are being, and have been, issued for a number of years. This is an appropriate law and we support it as a housekeeping measure.

Section 13 is one of the first amendments to the Sunshine Law regarding public documents in many years. This purports to remove from the list of public documents GPD's traffic accident reports, daily activity logs and similar information. This entire section (5 GCA 10104 (a)) has always been confusing and this proposed revision does little or nothing to make it clearer. The section as originally enacted purports to limit certain writings from inspection but also contains (4) which makes certain documents relating to GPD available to the public. We are unsure what will be resolved by removing the word "traffic" from the section except to make all accident reports available to the public rather than limiting those reports which are clearly available to those which deal with traffic accidents. The statutory language requiring disclosure of GPD documents should be limited to Police blotters and should not include accident reports which may contain information which could be detrimental to on-going investigations. Finally, the language making those GPD documents public should be contained in a separate subsection (b) rather than in subsection (a).

Section 14. The content of this section is misplaced. It intends to allow GPD to establish pursuant to the AAL fees for the copying of police clearances, traffic accident reports and police blotters. However, the proposed legislation would place it in a section of the Sunshine Law setting the fees for Certified Documents. Clearly these are not certified documents and this fee should not be placed in this section. It is appropriate to provide for fees for these documents/services but it should be placed either in Section 10203 which provides for fees for copying government documents or in its own section.

Section 15. We do not have the slightest idea of what this section is supposed to mean. We recall, several months ago GPD proposed a fee schedule at the request of the Governor. This section may be an attempt to retroactively approve that fee schedule.

BILL NO. 489

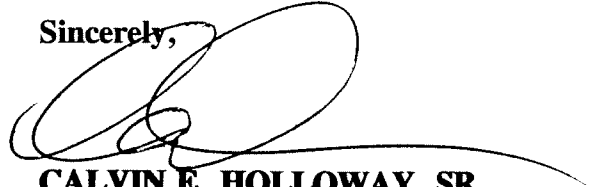
This is the bill which enacts the rules and regulations setting forth the fees to be charged as permitted in Bill 487. Although there is no way of determining how the fees were set we should defer to the judgement of GPD on this and recommend their adoption. They do not seem out of line with comparable stateside fees to our recollection.

Please feel free to contact our office should you have any questions or require additional information.

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Dangkolo Na Agradesimo - Thank You Very Much!

Sincerely,



CALVIN E. HOLLOWAY, SR.
Attorney General

cc: Legal Office, Office of the Governor
Dianne Corbett, Solicitors Division
Andy Artero-Boname, Prosecution Division

0305ebabill
CEH/bd

Copy

Run Date
2-15-96

Notice of Public Hearing



Senator Mark C.
Charfauros

Chairman, Committee on Judiciary,
Criminal Justice & Environmental Affairs
Twenty-Third Guam Legislature

Agenda

- Bill No. 449, AN ACT TO AMEND TITLE 9 GCA, RELATIVE TO MANDATORY MINIMUM SENTENCING FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR.
- Bill No. 479, AN ACT TO REPEAL AND REENACT ARTICLE 1 OF CHAPTER 28, TITLE 9 GCA, RELATIVE TO THE CRIMINAL ACT OF PROSTITUTION.
- Bill No. 487, AN ACT TO AMEND §57100, TO REPEAL AND REENACT §60122, TO AMEND SUBSECTIONS (a), (c), AND (g) OF §69104, §69105, SUBSECTIONS (a) AND (b) OF §69129, AND TO ADD A NEW §71104, ALL OF TITLE 10, GCA; TO ADD A NEW ARTICLE 3A TO CHAPTER 3, NEW ITEMS (rr) AND (ss) TO §1102, RENUMBER §9108 TO BE §9109 AND TO ADD A NEW §9108, ALL OF TITLE 16, GCA; AND TO AMEND §§10104 AND 10202 OF TITLE 5, GCA, RELATIVE TO CHANGING THE ISSUANCE OF CERTIFICATES OF IDENTIFICATION FOR PERSONS TO THE GUAM POLICE DEPARTMENT INSTEAD OF THE DEPARTMENT OF REVENUE AND TAXATION; TO HAVE FEE SET FOR FIREARM IDENTIFICATION AND REGISTRATION, TO PROVIDE IDENTIFICATION NUMBERS FOR VESSELS, CHANGE OF OWNERSHIP OF VESSELS, RENEW IDENTIFICATION NUMBERS FOR VESSELS, RENEWAL OF CERTIFICATES OF OWNERSHIP FOR VESSELS, SET FINES FOR VIOLATION OF THE TERRITORIAL BOATING ACT, AND SET FEES FOR ISSUANCE OF TEMPORARY FIREARMS IDENTIFICATION CARDS, ALL ACCORDING TO THE ADMINISTRATION [sic] ADJUDICATION ACT [sic]; TO PROVIDE FOR SPECIAL USE PERMITS FOR USE OF THE HIGHWAYS NEEDING SERVICES OF THE GUAM POLICE DEPARTMENT, ADD DEFINITIONS OF "SPECIAL USE PERMIT" AND "POLICE SERVICE", ESTABLISH THAT FAILURE TO OBTAIN A SPECIAL USE PERMIT WHEN NEEDED IS A VIOLATION, PROVIDE A CLEARANCE, CLARIFY PUBLIC DOCUMENTS IN THE GUAM POLICE DEPARTMENT, AND PROVIDE FEES FOR COPIES OF CERTAIN GUAM POLICE DEPARTMENT DOCUMENTS ACCORDING TO THE ADMINISTRATION [sic] ADJUDICATION LAW.
- Bill No. 489, AN ACT TO ESTABLISH FEES BY RULES AND REGULATIONS FOR SERVICES PROVIDED BY THE GUAM POLICE DEPARTMENT.

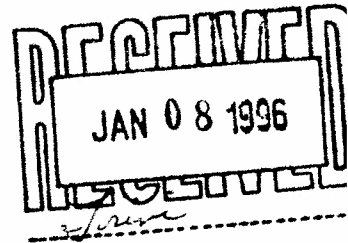
Rec'd 2/12/96
H. Borapelle

Date: Wednesday, February 21, 1996
Time: 9:30 a.m.
Place: Public Hearing Room
Guam Legislature Bldg.
155, Hesler St. Agana

The Public is invited to Attend



BUREAU OF BUDGET & MANAGEMENT RESEARCH
OFFICE OF THE GOVERNOR, Post Office Box 2950, Agaña, Guam 96910



CARL T.C. GUTIERREZ
GOVERNOR

JAN 4 1995

JOSEPH E. RIVERA
DIRECTOR

MADELEINE Z. BORDALLO
1 T. GOVERNOR

FRANCES J. BALAJADIA
DEPUTY DIRECTOR

The Bureau requests that Bill No(s). 449 be granted a waiver pursuant to Public Law 12-229 for the following reasons:

Bill No. 449 is an Act to repeal and reenact Section 25.10(b) of Title 9 of the Guam Code Annotated relative to the mandatory minimum sentencing for persons found guilty of criminal sexual conduct with a minor. The intent of the proposed legislation is administrative in nature and poses no fiscal impact on the General Fund.

Frances Balajadia
JOSEPH E. RIVERA
Acting



DEC 09 1995

**TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) REGULAR SESSION**

BILL NO. 449(LS)

Introduced by:

Elizabeth Barrett-Anderson *EAB*

**AN ACT TO AMEND TITLE 9 GUAM CODE ANNOTATED
RELATIVE TO MANDATORY MINIMUM SENTENCING
FOR PERSONS FOUND GUILTY OF CRIMINAL SEXUAL
CONDUCT WITH A MINOR**

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

2
3 Section 1. Section 25.10(b) of Title 9 Guam Code Annotated is
4
5 hereby repealed and reenacted to read as follows:

6
7 “(b) Criminal sexual conduct in the first degree is a felony
8
9 in the first degree. Any person convicted of criminal sexual
10
11 conduct under Section 25.10 (a) (1) or (2) shall be sentenced
12
13 to a minimum of twenty-five (25) years imprisonment to
14
15 life without possibility of parole. Any person convicted of
16
17 criminal sexual conduct under Section 25.10 (3) through (7)
18
19 may be sentenced to life imprisonment. Any person convicted
20
21 of first degree criminal sexual conduct shall not be eligible for
22
23 work release or educational programs outside the confines of
24
prison.”