



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

OCT 06 1997

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>11:45am</u>
Date	<u>10-7-97</u>

Refer to  
**Legislative Secretary**

The Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

Dear Speaker Unpingco:

Enclosed please find a copy of Bill No. 194 (COR), "AN ACT TO REPEAL AND REENACT §90.47 OF ARTICLE 1, CHAPTER 90 OF TITLE 9 OF THE GUAM CODE ANNOTATED AND TO REPEAL §90.48 OF ARTICLE 1, CHAPTER 90 OF TITLE 9 OF THE GUAM CODE ANNOTATED, ALL RELATIVE TO THE TRANSFER OF INMATES OFF ISLAND", which I have signed into law today as Public Law No. 24-86.

This legislation changes the current system where persons incarcerated at the Department of Corrections must wait and go through complicated procedures before the Territorial Parole Board to review their cases prior to consideration of transfer off island. The Territorial Parole Board currently reviews all matters concerning parole as well.

This legislation provides for the creation of a Transfer Review Committee consisting of a Department of Corrections case worker, the Attorney General or representative, a correctional officer, an inmate, and a member of the clergy. This insures that persons very familiar with the person who may be subject to transfer will review his or her case. It would also be a good idea for the Legislature to include an impartial member of the public on the Transfer Review Committee. The transfer review procedure is simplified and made easier for both the institution and the person considering transfer under this new procedure. The legislation provides that rules and regulations be also implemented for this new procedure.

Very truly yours,

Carl T. C. Gutierrez  
Governor of Guam

Attachment

cc: The Honorable Joanne M. S. Brown  
Legislative Secretary

00468

Office of the Speaker  
ANTONIO R. UNPINGCO  
Date: 10/7/97  
Time: 0930p  
Rec'd by: [Signature]  
Print Name: Marta D. Mans

TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

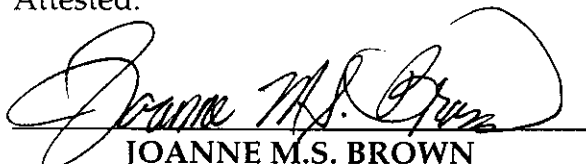
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 194 (COR), "AN ACT TO REPEAL AND RE-ENACT §90.47 OF ARTICLE 1, CHAPTER 90 OF TITLE 9 OF THE GUAM CODE ANNOTATED AND TO REPEAL §90.48 OF ARTICLE 1, CHAPTER 90 OF TITLE 9 OF THE GUAM CODE ANNOTATED, ALL RELATIVE TO THE TRANSFER OF INMATES OFF ISLAND," was on the 15th day of September, 1997, duly and regularly passed.



ANTHONY C. BLAZ  
Acting Speaker

Attested:



JOANNE M.S. BROWN  
Senator and Legislative Secretary

.....  
This Act was received by the Governor this 24th day of September, 1997, at  
5:00 o'clock P.M.



Assistant Staff Officer  
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ  
Governor of Guam

Date: 10-6-97

Public Law No. 24-86

**TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session**

**Bill No. 194 (COR)**  
As amended on the Floor.

Introduced by:

E. Barrett-Anderson  
T. C. Ada  
F. B. Aguon, Jr.  
A. C. Blaz  
J. M.S. Brown  
Felix P. Camacho  
Francisco P. Camacho  
M. C. Charfauros  
E. J. Cruz  
W. B.S.M. Flores  
Mark Forbes  
L. F. Kasperbauer  
A. C. Lamorena, V  
C. A. Leon Guerrero  
L. Leon Guerrero  
V. C. Pangelinan  
J. C. Salas  
A. L.G. Santos  
F. E. Santos  
A. R. Unpingco  
J. Won Pat-Borja

**AN ACT TO REPEAL AND RE-ENACT §90.47 OF  
ARTICLE 1, CHAPTER 90 OF TITLE 9 OF THE  
GUAM CODE ANNOTATED AND TO REPEAL  
§90.48 OF ARTICLE 1, CHAPTER 90 OF TITLE 9 OF  
THE GUAM CODE ANNOTATED, ALL RELATIVE  
TO THE TRANSFER OF INMATES OFF ISLAND.**

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

1           **Section 1.** Section 90.47 of Article 1, Chapter 90 of Title 9 of the Guam  
2 Code Annotated is hereby repealed and re-enacted to read as follows:

3           **“Section 90.47. Inmate Transfer: Non-Emergency.** The Director  
4 of Corrections is authorized to transfer an inmate to a correctional  
5 institution outside the Territory of Guam in non-emergency  
6 circumstances.

7           **Section 90.47.01. Same: Disciplinary Transfer.** The Director may  
8 recommend the transfer of an inmate to an institution outside the  
9 Territory of Guam for disciplinary reasons in the following  
10 circumstances:

11           (a) when an inmate is alleged by an officer, employee or  
12 other inmate to have committed a violation of such institution’s  
13 rules or regulations, which violation might constitute a threat to  
14 the order or discipline of the institution or to the physical safety of  
15 an officer, employee or any inmate; or

16           (b) when an inmate is subsequently convicted of a  
17 violation of §58.20 or §58.30 of this Code, or of any violent crime.

18           **Section 90.47.02. Same: Non-Disciplinary Transfer.** The Director  
19 may recommend the transfer of an inmate to an institution outside the  
20 Territory of Guam for non-disciplinary circumstances under either of  
21 the following circumstances:

22           (a) whenever the Director determines that, due to the  
23 physical or mental condition of an inmate, the present  
24 incarceration lacks adequate facilities for custody, care,  
25 subsistence, education, treatment or training of the inmate, and

1 that the interest of the inmate would be better served by transfer  
2 to an institution outside of the Territory; or

3 (b) whenever the Director determines that due to  
4 overcrowding which impacts on the adequacy of the facility to  
5 provide for the safe custody, care, subsistence, education,  
6 treatment and training of an inmate the interest of the inmate is  
7 better served by such transfer to an institution outside the  
8 Territory.

9 **Section 90.47.03. Same: Procedures for Transfers.** Whenever the  
10 Director of the Department of Corrections determines that an inmate be  
11 recommended for transfer to a correctional institute outside the  
12 Territory of Guam, the Director shall convene a Transfer Review  
13 Committee to review the basis for such recommended transfer. The  
14 Director shall promulgate through Executive Order rules and  
15 regulations for the establishment of a Transfer Review Committee to  
16 include:

17 a. a minimum of five (5) members to include a DOC case  
18 worker, the Attorney General or representative, a correctional  
19 officer, an inmate, a member of the clergy;

20 b. provisions for due notice on a recommended transfer,  
21 which shall include timely notice to the inmate and the Attorney  
22 General;

23 c. provisions for hearing, final decision and appeal from  
24 a final decision of transfer;

25 d. provisions for maintaining a record of each hearing.

1           **Section 90.47.04. Same: Basis of Determination.**

2           (a) The Transfer Review Committee shall base its determination  
3 for transfer upon substantial evidence as presented on the record at  
4 hearing, and shall be final. No inmate shall be recommended for  
5 transfer while any conviction for which he was incarcerated is on  
6 appeal. Any statement made by an inmate during the course of a  
7 transfer hearing shall not be admitted in evidence against the inmate in  
8 any subsequent criminal action, except for the purpose of impeachment  
9 or in a trial for perjury, false swearing or contempt.

10          (b) The Administrative Adjudication Law and the Open  
11 Government Law shall not apply to any proceeding or action taken  
12 under this Section, nor shall any inmate be represented by counsel in  
13 any proceeding held pursuant to this Section.

14           **Section 90.47.05. Same: Appeal from Determination.** Any  
15 inmate whom the Transfer Review Committee has determined is to be  
16 transferred under these provisions may appeal such determination to  
17 the Superior Court of Guam. The review of the Superior Court shall not  
18 be de novo, and shall be limited to a review of the record to determine  
19 whether the Transfer Review Committee made its determination based  
20 upon a fair and full hearing. A determination may be reversed only  
21 upon a showing that the Committee abused its discretion in applying  
22 the rules and regulations to the facts which provided the basis for the  
23 recommended transfer, and that to allow the decision to stand would  
24 result in a miscarriage of justice. Notice of filing an appeal in accordance

1 with this Subsection does not automatically stay an inmates transfer  
2 pending appeal.”

3 **Section 2.** Section 90.48 of Article 1, Chapter 90 of Title 9 of the  
4 Guam Code Annotated is hereby repealed.



Committee on Judiciary, Public Safety  
and Consumer Protection



Twenty-Fourth Guam Legislature

Pl 24-80

Senator  
Elizabeth Barrett-Anderson  
Chairperson

Senator  
John C. Salas  
Vice-Chairman

Senator  
Anthony C. Blaz  
Member

Senator  
Joanne M.S. Brown  
Member

Senator  
Mark Forbes  
Member

Senator  
Edwardo J. Cruz, M.D.  
Member

Senator  
Vicente C. Pangelinan  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

August 5, 1997

SPEAKER ANTONIO R. UNPINGCO  
Twenty-Fourth Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Judiciary, Public Safety and Consumer Protection, to which was referred **Bill No. 194**, wishes to report back to the Legislature with its recommendation **TO DO PASS Bill No. 194**.

The voting record is as follows:

<u>6</u>	TO PASS
<u>1</u>	NOT TO PASS
—	ABSTAIN
—	TO PLACE IN INACTIVE FILE

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

Your attention to this matter is greatly appreciated.

Sincerely,

ELIZABETH BARRETT-ANDERSON  
Chairperson

Attachments



# COMMITTEE ON JUDICIARY, PUBLIC SAFETY AND CONSUMER PROTECTION TWENTY-FOURTH GUAM LEGISLATURE

173 ASPINALL AVENUE, ADA PLAZA CENTER SUITE 108A, AGANA, GUAM 96910

SENATOR ELIZABETH BARRETT-ANDERSON  
Chairperson

SENATOR JOHN C. SALAS  
Vice-Chairperson

SPEAKER ANTONIO R. UNPINGCO  
Ex-Officio Member

## VOTING SHEET

**Bill No. 194 by the Committee on Judiciary, Public Safety and Consumer Protection: AN ACT TO REPEAL AND REENACT 9 GCA §90.47 AND TO REPEAL 9 GCA §90.48, ALL RELATIVE TO THE TRANSFER OF INMATES OFF-ISLAND**

<u>COMMITTEE MEMBERS</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO PLACE IN</u>		<u>INITIAL</u>
			<u>ABSTAIN</u>	<u>INACTIVE FILE</u>	
1). Sen. Elizabeth Barrett-Anderson Chairperson	✓				<i>EBA</i>
2). Sen. John C. Salas Vice-Chairperson	✓				<i>Salas</i>
3). Sen. Frank B. Aguon, Jr. Member	✓				<i>[Signature]</i>
4). Sen. Anthony C. Blaz Member	✓				<i>[Signature]</i>
5). Sen. Joanne M.S. Brown Member	✓				<i>[Signature]</i>
6). Sen. Eduardo J. Cruz M.D. Member	✓				<i>[Signature]</i>
7). Sen. Mark Forbes Member					
8). Sen. Vicente C. Pangelinan Member		✓			<i>[Signature]</i>

Committee on Judiciary, Public Safety and Consumer Protection  
**ELIZABETH BARRETT-ANDERSON, CHAIRPERSON**

**Committee Report**  
on

**Bill No. 194:** AN ACT TO REPEAL AND REENACT  
9 GCA §90.47 AND TO REPEAL 9 GCA  
§ 90.48, ALL RELATIVE TO THE  
TRANSFER OF INMATES OFF-ISLAND.

**I. Summary**

The Committee on Judiciary, Public Safety and Consumer Protection held a public hearing on Wednesday, May 7, 1997 at 2:00 p.m. on Bill No. 194 at the Legislative Public Hearing Room. Public Notice was announced in the April 30 and May 6, 1997 issues of the Pacific Daily News.

Committee Members Present:

Senator Elizabeth Barrett-Anderson, Chairperson  
Senator Vicente Pangelinan  
Senator Frank Aguon

Senators Present:

Senator Lou Leon Guerrero  
Senator Tom Ada

Providing Public Testimony on the Bill:

Eduardo C. Bitanga, **oral**  
Sarah Thomas-Nededog, **oral and written (see Attachment "A")**  
Attorney General Calvin E. Holloway, Sr., **written (see Attachment "B")**

Purpose:

The purpose of the bill is to grant the Director of Corrections more autonomy in transferring inmates to off-island facilities, and to allow him to move more quickly in effecting such transfers by simplifying the statutory procedures to be followed.

Relationship to Existing Law:

Section 1 repeals 9 GCA § 90.47 and reenacts it to create six new sections, 90.47 through 90.47.05.

§90.47 authorizes the Director to unilaterally transfer an inmate in non-emergency situations.

§90.47.01 establishes the statutory grounds for disciplinary transfers: (a) serious violations of DOC rules threatening the order or discipline of the institution or the safety of an inmate or staff; or (b) conviction of escape or any violent crime by an inmate.

§90.47.02 establishes statutory grounds for non-disciplinary transfers: (a) The Director finds that the DOC lacks adequate facilities to properly care for or treat an inmate having a particular physical or mental condition, or (2) overcrowding adversely affects the safe custody and care of the inmate, and the inmates's interests would be better served by transfer to an off-island facility.

§90.47.03 sets forth statutory procedures for handling recommendations by the Director to transfer an inmate to a correctional facility outside Guam. This will involve convening a Transfer Review Committee to review the bases for the recommendation. The committee, to be created pursuant to regulations, will consist of at least five (5) members who will hear the matter and make a determination regarding the transfer.

§90.47.04 states the bases for the committee's decision and precludes transfer of an inmate while his conviction is on appeal (same as existing law) and makes privileged any inmate statements made during a hearing. The provisions of existing law relating to the non-applicability of the Administrative Adjudication Law and the Open Government Law are continued.

§90.47.05 provides for an inmate's appeal on the record to Superior Court and sets grounds for any reversal of the transfer determination.

Section 2 repeals 9 GCA §90.48, the existing provisions relating to non-emergency and non-disciplinary transfers.

## **II. Summary of Testimony**

### **Eduardo C. Bitanga, Director of Corrections**

Mr. Bitanga testified in strong support of Bill 194. He stated that it would allow him to move more quickly in taking action to transfer inmates off-island for disciplinary purposes and in non-emergency, non-disciplinary situations. At times, a transfer is necessary to protect the safety of the inmate or to obtain

treatment that is unavailable here, and he needs to be able to act more quickly than he now can. At present, the Director of Corrections can only recommend to the Parole Board that an inmate be transferred and the matter set for hearing by the Board. He said that he has requested such a bill that would remove some of the lengthy procedures he must go through in order to do his job properly. He respectfully requests that the Legislature pass the bill.

**Sarah M. Thomas-Nededog**  
**P.O. Box 8633**  
**Tamuning, Guam 96931**

Ms. Nededog testified that she was appearing before the Committee to speak against the bill. She is now a private citizen who in the late 1970's chaired the Task Force on Corrections, and in 1983 was appointed by Governor Bordallo to the Territorial Parole Board where she served for over 10 years. In her years on the board she heard several requests for off-island transfers and each was handled promptly by the board. The system proposed by Bill 194 would not provide the system of checks and balances as does the present system. A qualified group of persons with no special interests, such as the Parole Board, is needed in order to make objective decisions regarding off-island transfers of inmates. She stated that the Legislature should support updating the parole board statutes and improving the parole system. She asked that the Committee refocus its direction on the bill.

**Calvin E. Holloway, Sr.**  
**Attorney General of Guam**

Mr. Holloway submitted written testimony by way of a letter with enclosed memorandum supporting Bill 194, stating that it would remove the cumbersome procedural requirements that now must be met before an inmate may be transferred off-island by the Director of Corrections. The memorandum states also that improved procedures in the bill will make it much easier for the Director to respond as quickly as possible, consistent with protection of inmates' interests, as provided under rules and regulations, and to address any situations at DOC that may require off-island transfers.

### **III. Findings and recommendations**

The Committee on Judiciary, Public Safety and Consumer Protection finds support for the passage of Bill No. 194 as introduced by Senator Barrett-Anderson and presents its report with its recommendation **TO DO PASS**.

May 7, 1997

Honorable Elizabeth Barrett-Anderson  
Chairperson  
Committee on Judiciary, Public Safety and Consumer Protection  
24th Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Madame Chairperson and Members of the Committee:

My name is Sarah Thomas-Nededog and I come before you today as a private citizen to testify against **Bill No. 194** relative to the transfer of inmates off island.

My interests stems from my involvement in the judicial system. I was a member for several years on the Criminal Justice Advisory Board in the late 1970's chairing the Task Force on Corrections. In 1983, I was appointed by late Governor Bordallo to the Territorial Parole Board where I served as member for over 10 years. I have been a social worker and human services manager for about 20 years now with particular emphasis on prevention and organizational development.

In the many years on the Parole Board, there were several requests for off-island transfers. In each and every case, the Board acted promptly and judiciously. There was even one case whereas the inmates who were sent off island came back to Guam to get a fair hearing for their involuntary transfer. Although, this was a costly and difficult situation, it is my opinion that it was done properly and fairly for all those concerned.

The system that it is proposed in this bill would not provide the checks and balances for this important decision to transfer inmates off island. The composition of the proposed review committee would not bring forth the versatility and independent judgment that this type of decision would prescribe.

The corrections Director sentiments are indeed critical and are the main viewpoints considered in these decisions. But the whole idea of having the Parole Board make the final determination is to ensure that a qualified group of individuals with no special interests or obligations hear all testimonies for or against such action, and then weigh the merits objectively.

The appropriate systems and processes are already in place. If the Legislature wants to fix it, then the support should go to expanding the number of parole officers, updating existing parole board statues, providing recording services and legal counsel, and opportunities for training to the membership of the parole board.

*SMThomas-Nededog*

I humbly plead with you Madame Chair and members of the committee to refocus your direction on this bill.

I am available should you need additional information or clarification.

Humbly,

A handwritten signature in black ink, appearing to read 'S. Thomas-Nededog', followed by a horizontal line extending to the right.

**SARAH M. THOMAS-NEDEDOG**

DEPARTMENT OF LAW

ATTACHMENT "B"



Carl T.C. Gallenmez  
Magañani  
Governor

Calvin E. Holloway, Sr.  
Hiniñat Abugao  
Attorney General

Madeleine Z. Bordallo  
Tinenta Gobernadora  
Lt. Governor

Upisinan Hiniñat Abugao  
Tinentian Guahan  
Office of the Attorney General  
Territory of Guam

Gen F. Diaz  
Atkabi, Segundo Hiniñat Abugao  
Chief Deputy Attorney General

May 7, 1997

The Honorable Elizabeth Barrett-Anderson  
Chairperson  
Committee on Judiciary, Public Safety & Consumer Protection  
Twenty-Fourth Guam Legislature  
Ada Plaza Center - Suite 108A  
173 Aspinall Avenue  
Agana, Guam 96910

Re: Notice of Public Hearing for Various Bills

Dear Senator Barrett-Anderson:

Buenas Yan Saluda!

This is in response to your letter dated April 22, 1997, concerning same subject as above.

The attached are the opinions of our various Deputies for the bills in question. We hereby submit written testimony on Bill Numbers 38, 161, [redacted] Mr. Phillip Tydingco, our Acting Chief Prosecutor will appear before your committee to support Bill No. 187 in principle; however, he recommends a comprehensive package.

We are hopeful that the attached opinions will be of assistance to your committee in enacting legislation which will assist our department in becoming more efficient and effective.

With thanks in anticipation of your consideration.



Commonwealth of Guam

Reproduced at Government of Guam Expense

If there are either questions, or concerns, please do not hesitate to call me.

Dångkolo na Si Yu'os Ma'åse' - Thank you very much!

Sincerely,



CALVIN E. HOLLOWAY, SR.  
Attorney General

cc: Acting Chief Prosecutor, Prosecution Division  
Deputy, Solicitors Division  
Deputy, Family Division  
Deputy, Compilers Division

reproduced at Government of Guam Expense



**Commonwealth Now!**

Judicial Center Building, 120 West O'Brien Drive, Suite 2-200E, Agaña, Guam 96910  
Tel: (671) 473-3324, Fax: (671) 472-2493, E-Mail: law@gs.gou.gu





GOVERNMENT OF GUAM  
AGANA, GUAM 96910

May 5, 1997

Memorandum (Informational)

To: Attorney General *05/6/97*

Via: Chief deputy  
Solicitor *WHL*

From: Assistant Attorney General

Subject: Review of Bill 194 (COR)

Bill Topic: Changes in the procedures used to transfer inmates off-island

Recommendation: That this office support this bill

Hafa Adai!

This bill is intended to remove the cumbersome procedures enacted in 1979 as 9 CGA §90.48 et seq. These sections were enacted in response to several earlier incidents at the prison. Prior to the enactment of this statute there had been very few transfers of inmates off-island and those that had occurred had been mainly for medical treatment. Due to the difficulties at DOC in the late 1970's, the administration found it necessary to consider the removal of certain inmates at DOC for disciplinary reasons. When early attempts to transfer met with objections, the legislature enacted this law to establish the ground rules for such transfers.

In recent years it has become apparent that the restrictions placed on inmate transfers have created a cumbersome situation which has severely limited the ability of the DOC Director to manage the institution.

Much of this bill is simply a restatement of the language found in the present statute. The most significant changes take the determination as to whether an inmate should be transferred away from the Territorial Parole Board and placed it in the hands of a Transfer Review Committee which is appointed by the Director of DOC.

Reproduced at Government of Guam Expense



Commonwealth Now!

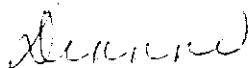
Memo to Attorney General  
May 5, 1997  
Page 2

Where §§90.48 et seq statutorily created lengthy and often burdensome procedural requirements that had to be met before an inmate could be transferred, the proposed amendments simply require that the Director promulgate, by Executive Order, rules and regulations for the Transfer Review Committee. Thus, it should be much easier for the Director to respond as quickly as necessary, consistent with the protections provided in the rules and regulations, to address a situation (of whatever nature) which may arise at DOC.

I have spoken to Ed Bitanga and he indicates to me that he would find this system infinitely easier to manage than that provided by the current statute. This office should support this bill.

This memorandum is informational only and is not issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

Dángkolo Na Agradesimiento - Thank You Very Much!



DIANNE H. CORBETT

bill194.rev  
DHC/lzl