



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OCT 07 1997

**Refer to
Legislative Secretary**

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

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>3:20 pm</u>
Date	<u>10-7-97</u>

Dear Speaker Unpingco:

Enclosed please find a copy of Bill No. 203 (COR), "AN ACT TO ADD A NEW ARTICLE 2 AND AMEND §69116 AND TO REPEAL AND RE-ENACT §69129(d), ALL OF CHAPTER 69, DIVISION 3 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO REDEFINING AND ESTABLISHING PENALTIES FOR OPERATING A MOTORBOAT OR VESSEL UNDER THE INFLUENCE OF ALCOHOL OR DRUGS", which I have signed into law today as **Public Law No. 24-87.**

This legislation extends penalties for the operation of motorboats and vessels under the influence of alcohol and drugs, as is the case with the operation of an automobile.

This legislation is a safety measure. Should more boat and vessel operators use our waterways, we need to ensure that the safety of the operators, passengers, and any person or property on or near our waterways is safe, and that accidents and injuries do not happen due to unsafe practices on the water.

Very truly yours,

[Signature]
Carl T. C. Gutierrez
Governor of Guam

Office of the speaker
ANTONIO R. UNPINGCO
Date: 10-7-97
Time: 1:50 pm
Rec'd by: [Signature]
Print Name: Janice Mesa

Attachment

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

00469

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 203 (COR), "AN ACT TO ADD A NEW ARTICLE 2 AND TO AMEND §69116 AND TO REPEAL AND RE-ENACT §69129(d), ALL OF CHAPTER 69, DIVISION 3 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO REDEFINING AND ESTABLISHING PENALTIES FOR OPERATING A MOTORBOAT OR VESSEL UNDER THE INFLUENCE OF ALCOHOL OR DRUGS," was on the 15th day of September, 1997, duly and regularly passed.



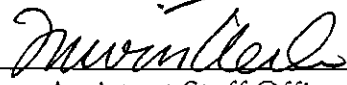
ANTHONY C. BLAZ
Acting Speaker

Attested:




JOANNE M.S. BROWN
Senator and Legislative Secretary

.....
This Act was received by the Governor this 26th day of September 1997, at
4:00 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 10-7-97

Public Law No. 24-87

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

Bill No. 203 (COR)

As amended by the Committee on
Judiciary, Public Safety and Consumer
Protection and as amended on the Floor.

Introduced by:

M. C. Charfauros
A. L.G. Santos
T. C. Ada
F. B. Aguon, Jr.
E. Barrett-Anderson
A. C. Blaz
J. M.S. Brown
Felix P. Camacho
Francisco P. Camacho
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
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

**AN ACT TO ADD A NEW ARTICLE 2 AND TO
AMEND §69116 AND TO REPEAL AND RE-ENACT
§69129(d), ALL OF CHAPTER 69, DIVISION 3 OF
TITLE 10 OF THE GUAM CODE ANNOTATED,
RELATIVE TO REDEFINING AND ESTABLISHING
PENALTIES FOR OPERATING A MOTORBOAT**

**OR VESSEL UNDER THE INFLUENCE OF
ALCOHOL OR DRUGS.**

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

Section 1. Legislative Statement and Intent. The Guam Legislature finds that existing law provides that the penalty for operating a motorboat or vessel while under the influence of alcohol, drugs, or both, is a petty misdemeanor. Boating on Guam is a popular activity enjoyed by many of our citizens. Redefining the law is necessary to provide penalties consistent with the offenses committed, and ensuring that our waters are safe for boating and other recreational activities.

This legislation would establish the provisions of law necessary to properly define and enforce the offense of operating a motorboat or vessel while under the influence of alcohol, drugs, or both.

Section 2. A new Article 2 is hereby added to Chapter 69, Division 3 of Title 10 of the Guam Code Annotated to read as follows:

“ARTICLE 2

Offenses Involving Alcohol and Controlled Substances.

§69200. Definitions.

§69201. Influence of Alcohol and Controlled Substances; Causing Bodily Injury to Person Other Than Driver; Alcoholic Content in Blood; Proof.

§16202. Operating While Intoxicated; Presumptions.

§69203. Conviction of First Violation of §69201; Punishment.

§69204. Second Conviction of §69201; Punishment.

§69205. Conviction of Violation of §69201 Within Five Years After

1 **Two Violations; Punishment.**

2 §69206. **Conviction of Violation of §69201 Within Five Years of**
3 **Three or More Violations of Designated Sections;**
4 **Punishment.**

5 §69207. **Forfeiture of Motorboat or Vessel.**

6 §69208. **Conviction Involving a Child.**

7 §69209. **Motorboat or Vessel Negligence; Third Degree Felony.**

8 §69210. **Motorboat or Vessel Homicide; Classified.**

9 §69211. **Use of Controlled Substance as Defense to Violations.**

10 §69212. **Implied Consent of Operator of a Motorboat or Vessel to**
11 **Submit to Blood, or Breath Testing to Determine Alcohol**
12 **or Controlled Substances Content of Blood.**

13 **Section 69200. Definitions. As used in this Chapter:**

14 (a) *'Operating under the influence or while intoxicated'* means
15 any person operating or in physical control of any motorboat or vessel,
16 or similar device under the influence of an alcoholic beverage or a
17 controlled substance or a combination thereof, when as a result of
18 consuming such alcoholic beverage or controlled substance or the
19 combination thereof, his or her physical or mental abilities are impaired
20 to such a degree that he or she no longer has the ability to operate the
21 motorboat or vessel with the caution characteristics of a sober person of
22 ordinary prudence, under the same or similar circumstance, and
23 includes any person operating or in actual physical control of a
24 motorboat or vessel, or similar device, who has eight one-hundredths of
25 one percent (0.08%) or more, by weight, of alcohol in his or her blood.

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

3 (c) *'Prior offense of operating under the influence'* includes a
4 conviction based on laws regarding the operation of motorboats or
5 vessels under the influence in effect prior to enactment of this Chapter,
6 or under laws in any other jurisdiction in the world if the offense upon
7 which the conviction is based would, if committed in Guam, be a
8 violation of §69201 of this Chapter.

9 (d) *'Controlled substances'* means those so defined by Chapter
10 67, Title 9, Guam Code Annotated, the Uniform Controlled Dangerous
11 Substances Act.

12 (e) *'Motorboat or Vessel Homicide'* means a person who does
13 any act forbidden by law in the operation of a motorboat or vessel or
14 who negligently operates a motorboat or vessel, which act or negligence
15 proximately causes death to any person other than the operator.

16 (f) *'Motorboat or Vessel homicide while intoxicated'* means a
17 person, while operating a motorboat or vessel under the influence does
18 any act forbidden by law in the operation of a motorboat or vessel or if
19 he or she negligently operates a motorboat or vessel, which act or
20 negligence proximately causes death to any person other than the
21 operator.

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

25 (h) *'Reasonable cause'* means such a state of facts as would lead

1 a person of ordinary care and prudence to believe and conscientiously
2 entertain an honest strong suspicion that the person operating and in
3 physical control of a motorboat or vessel is under the influence of
4 alcohol or of a controlled substance or of a combination thereof.

5 **Section 69201. Influence of Alcohol and Controlled Substances;**
6 **Causing Bodily Injury to Person Other Than Operator; Alcoholic**
7 **Content in Blood; Proof.** (a) It is unlawful for any person, while under
8 the influence of an alcoholic beverage or any controlled substance, or
9 under the combined influence of an alcoholic beverage and any
10 controlled substance, to operate or be in physical control of any
11 motorboat or vessel, or similar device.

12 (b) It is unlawful for any person, while having eight one-
13 hundredths of one percent (0.08%) or more, by weight, of alcohol
14 in his or her blood to operate or be in physical control of any
15 motorboat or vessel, or similar device.

16 (c) It is unlawful for any person, while under the influence
17 of an alcoholic beverage or any controlled substance, or under the
18 combined influence of an alcoholic beverage and any controlled
19 substance, to operate or be in physical control of any motorboat or
20 vessel, or similar device and, when doing so, do any act forbidden
21 by law or neglect any duty imposed by law in the operation of
22 such device or who negligently operates such device, which act or
23 neglect or negligence proximately causes bodily injury to any
24 person other than the operator.

25 (d) It is unlawful for any person, while having eight one-

1 hundredths of one percent (0.08%) or more, by weight, of alcohol
2 in his or her blood to operate or be in physical control of any
3 motorboat or vessel, or similar device and, when doing so, do any
4 act forbidden by law or neglect any duty imposed by law in the
5 operation of such vessel, which act or neglect proximately causes
6 bodily injury to any person other than the operator.

7 (e) In any prosecution under this Section, it is a rebuttable
8 presumption that the person with eight one-hundredths of one
9 percent (0.08%) or more, by weight, of alcohol in his or her blood
10 at the time of operating or in actual physical control of any
11 motorboat or vessel, or similar device is under the influence of
12 alcohol if the person had eight one-hundredths of one percent
13 (0.08%) or more, by weight, of alcohol in his or her blood at the
14 time of the performance of a blood or breath test within three (3)
15 hours after the driving.

16 (f) In proving the person neglected any duty imposed by
17 law in the operation of any motorboat or vessel, or similar device,
18 it is not necessary to prove that any specific Section of this Title
19 was violated.

20 (g)(1) Notwithstanding the other provisions of this Section,
21 a person under the age of eighteen (18) shall be guilty of a
22 violation of Subsections (b) or (d) of this Section if such person
23 shall be found within three (3) hours of his or her arrest for a
24 violation of this Section to have four one-hundredths of one
25 percent (0.04%) or more, by weight, of alcohol in his or her blood.

1 (2) A person convicted for the first time of a
2 violation of Item (1) of this Subsection shall be guilty of a
3 misdemeanor.

4 **Section 69202. Driving While Intoxicated; Presumptions.** (a)
5 Upon the trial of any criminal action, or preliminary proceeding in a
6 criminal action, arising out of acts alleged to have been committed by
7 any person while operating or being in actual physical control of any
8 motorboat or vessel, or similar device, while under the influence of an
9 alcoholic beverage in violation of Subsections (b) or (d) of §69201 of this
10 Chapter, the amount of alcohol in the person's blood at the time of the
11 test as shown by an analysis of that person's blood or breath shall give
12 rise to the following presumptions affecting the burden of proof:

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

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

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

1 preponderance of the evidence:

2 (1) that the instrument used for the test was properly
3 checked and in proper working order at the time of conducting the
4 test;

5 (2) that any chemicals employed in the test were of the
6 correct kind and compounded in the proper proportions;

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

10 (4) that the test was given by a qualified operator and in
11 the proper manner.

12 The provisions of this Subsection shall not be construed as limiting the
13 introduction of any other competent evidence bearing upon the question
14 whether the person ingested any alcoholic beverage or was under the
15 influence of an alcoholic beverage at the time of the alleged offense.

16 **Section 69203. Conviction of First Violation of §69201;**
17 **Punishment.** (a) If any person is convicted of a first violation of §69201
18 of this Chapter, that person shall be guilty of a misdemeanor and shall
19 be punished by imprisonment in the custody of the Department of
20 Corrections ('DOC') or the Guam Police Department ('GPD') for not less
21 than a mandatory forty-eight (48) hours nor more than one (1) year and
22 a fine of not less than One Thousand Dollars (\$1,000) nor more than Five
23 Thousand Dollars (\$5,000). In addition, the judge may impose any
24 additional penalties, including requiring the offenders to pay restitution
25 to persons injured or for property damaged.

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

5 (c) The court may order that any person punished under this
6 Section be prohibited from operating any motorboat or vessel on any
7 waters of this Territory for a period of not more than two (2) years.

8 **Section 69204. Second Conviction of §69201; Punishment.** (a) If
9 any person is convicted of a violation of §69201 of this Chapter and the
10 offense occurred within five (5) years of a separate conviction of a
11 violation of said §69201 or of conviction of a prior offense as defined in
12 §69201(c) of this Chapter, that person shall be guilty of a misdemeanor
13 and shall be punished by imprisonment in the custody of DOC or GPD
14 for not less than a mandatory seven (7) days nor more than two (2) years
15 and by a fine of not less than Two Thousand Dollars (\$2,000.00) nor
16 more than Five Thousand Dollars (\$5,000.00).

17 (b) The court may order that any person punished under this
18 Section be prohibited from operating any motorboat or vessel on any
19 waters of this Territory for a period of not more than three (3) years.

20 **Section 69205. Conviction of Violation of §69201 Within Five**
21 **Years After Two Violations; Punishment.** (a) If any person is convicted
22 of a violation of §69201 of this Chapter and the offense occurred within
23 five (5) years of two (2) separate convictions of a violation of said §69201
24 or of two (2) separate convictions of a prior offense as defined in
25 §69201(c) of this Chapter, or any combination thereof resulting in two (2)

1 or more prior convictions, that person shall be guilty of a felony of the
2 third degree and shall be punished by imprisonment in the custody of
3 DOC or GPD for not less than a mandatory ninety (90) days and not
4 more than five (5) years and by a fine of not less than Three Thousand
5 Dollars (\$3,000.00) nor more than Five Thousand Dollars (\$5,000.00).

6 (b) The court may order that any person punished under this
7 Section be prohibited from operating any motorboat or vessel on any
8 waters of this Territory for a period of not more than five (5) years.

9 **Section 69206. Conviction of Violation of §69201 Within Five**
10 **Years of Three or More Violations of Designated Sections;**
11 **Punishment.** (a) If any person is convicted of a violation of §69201 of
12 this Chapter and the offense occurred within five (5) years of three (3) or
13 more separate convictions of a violation of said §69201 or of three (3) or
14 more separate convictions of a prior offense as defined in §69201(c) of
15 this Chapter, or any combination thereof resulting in three (3) or more
16 prior convictions, that person shall be punished by imprisonment in the
17 custody of DOC or GPD for not less than a mandatory one (1) year nor
18 more than six (6) years, and by a fine of not less than Four Thousand
19 Dollars (\$4,000.00) nor more than Seven Thousand Dollars (\$7,000.00).

20 (b) The court may order that any person punished under this
21 Section be prohibited from operating any motorboat or vessel on any
22 waters of this Territory for a period of not more than seven (7) years.

23 **Section 69207. Forfeiture of Motorboat or Vessel.** Any person
24 convicted of violating the provisions of §69201 of this Chapter three (3)
25 or more times, as provided in §69206 of this Chapter, shall forfeit the

1 motorboat or vessel in which the third offense, or more, was committed.
2 However, in those cases where there is a showing of extreme
3 circumstances or where the motorboat or vessel is owned by a person
4 other than the person convicted of three (3) or more violations of said
5 §69201, and the owner had no knowledge that the motorboat or vessel
6 would be driven by an intoxicated person and that the driver had been
7 convicted of prior violations of said §69201, the court may order that
8 there be no forfeiture of the motorboat or vessel. At the time of arrest for
9 an offense under said §69201, the motorboat or vessel in which the
10 offense was committed shall be impounded by GPD and released only
11 upon the approval of the Prosecution Division of the Attorney General's
12 Office when it is determined that the motorboat or vessel is not subject
13 to forfeiture under this Section. The seizure and forfeiture of the
14 motorboat or vessel shall be enforced by GPD and the motorboat or
15 vessel shall be disposed of in accordance with those provisions of law
16 relating to assets forfeiture by public sale or auction at such times as
17 GPD may choose to conduct such sale or auction. The Chief of Police of
18 GPD shall convey clear title as owner of said confiscated motorboat or
19 vessel, subject to any perfected security interests in said motorboat or
20 vessel.

21 **Section 69208. Conviction Involving a Child.** Notwithstanding
22 any other provision of law, a person convicted of a violation of §69201 of
23 this Chapter shall be guilty of a felony of the third degree if at the time
24 of his or her arrest the person was operating a motorboat or vessel in
25 which a child under the age of sixteen (16) was a passenger or if a child

1 under the age of sixteen (16) was injured as a result of an accident in
2 which the motorboat or vessel operated by the person was involved.

3 **Section 69209. Motorboat or Vessel Negligence; Third Degree**
4 **Felony.** Any violation of Subsections (c) or (d) of §69201 of this Chapter
5 shall be a felony of the third degree.

6 **Section 69210. Motorboat or Vessel Homicide; Classified.** (a) A
7 person is guilty of motorboat or vessel homicide if, while, he or she does
8 any act forbidden by law in the operation of any motorboat or vessel or
9 if he or she negligently operates a motorboat or vessel, which act or
10 negligence proximately causes death to any person other than himself or
11 herself. As allowed in §4.45 of Title 9, Guam Code Annotated, in
12 proving that the person did any act forbidden by law, it shall not be
13 necessary to prove that the person possessed a culpable mental state.
14 Motorboat or vessel homicide is a felony of the second degree and shall
15 be punishable by imprisonment in the custody of DOC and GPD for up
16 to eight (8) years.

17 (b) A person is guilty of motorboat or vessel homicide
18 while intoxicated if, while operating a motorboat or vessel in
19 violation of §69201 of this Chapter, he or she does any act
20 forbidden by law in the operation of such motorboat or vessel or if
21 he or she negligently operates a motorboat or vessel, which act or
22 negligence proximately causes death to any person other than
23 himself or herself. As allowed in §4.45 of Title 9, Guam Code
24 Annotated, in proving that the person did any act forbidden by
25 law, it shall not be necessary to prove that the person possessed a

1 culpable mental state. Motorboat or vessel homicide while
2 intoxicated is a felony of the second degree and shall be
3 punishable by imprisonment in the custody of DOC or GPD for
4 not less than a mandatory five (5) years, and up to fifteen (15)
5 years. The court may order that any person punished under this
6 Subsection be prohibited from operating any motorboat or vessel
7 on any waters of this Territory for a period of not more than ten
8 (10) years.

9 **Section 69211. Use of Controlled Substance as Defense to**
10 **Violations.** The fact that any person charged with operating a
11 motorboat or vessel under the influence of alcohol or any controlled
12 substance or a combination thereof, in violation of §69201 of this
13 Chapter, is or has been entitled to use a controlled substance shall not
14 constitute a defense against any violation of said §69201.

15 **Section 69212. Implied Consent of Operator of a Motorboat or**
16 **Vessel to Submit to Blood, or Breath Testing to Determine Alcohol or**
17 **Controlled Substances Content of Blood.** (a) Any person who operates
18 a motorboat or vessel within Guam's Exclusive Economic Zone shall be
19 deemed to have given consent to a blood or breath test for the purpose
20 of determining the alcohol or controlled substance content of the
21 person's blood.

22 (b) The blood or breath tests shall be administered at the
23 request of the peace officer having reasonable cause to believe the
24 person operating or in actual physical control of a motorboat or
25 vessel within Guam's Exclusive Economic Zone is under the

1 influence of alcohol or controlled substances only after: (1) a
2 lawful arrest, and (2) the person has been informed by a peace
3 officer that his or her refusal to be tested may be used in evidence
4 against him or her in any charge arising from the arrest.

5 (c) If there is probable cause to believe that a person is in
6 violation of §69201 of this Chapter, then the person shall have the
7 option of using a blood or breath test for the purpose of
8 determining the alcohol or controlled substance content of that
9 person's blood.

10 (d) No person, other than a physician, registered nurse, or
11 person licensed in a clinical laboratory, may withdraw blood for
12 the purpose of determining the alcohol or controlled substance
13 content thereof. This limitation shall not be apply to the taking of a
14 breath specimen.

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

20 **Section 3.** Section 69116 of Chapter 69, Division 3 of Title 10 of the
21 Guam Code Annotated is hereby amended to read as follows:

22 **"Section 69116. Prohibited Operation. (a) Reckless or Negligent.**
23 No person shall operate or manipulate any water skis, aquaplane,
24 surfboard, or similar device in a reckless or negligent manner so as to
25 endanger the life, limb or property of any person.

1 **(b) Under the Influence of Alcohol or Drugs.** No person shall
2 operate or manipulate any water skis, aquaplane, surfboard, or similar
3 device while under the influence of alcohol, any narcotic drug,
4 barbiturate or marijuana.”

5 **Section 4.** Section 69129(d) of Chapter 69, Division 3 of Title 10 of the
6 Guam Code Annotated is hereby repealed and re-enacted to read as follows:

7 “(d) Any person convicted of reckless or negligent operation or
8 manipulation of any water skis, aquaplane, surfboard, or similar device
9 while under the influence of intoxicating liquids, narcotic drugs,
10 barbiturates or marijuana may, in addition to the above penalties, be
11 prohibited by the court having jurisdiction of such violation, from
12 operating any water skis, aquaplane, surfboard, or similar device on any
13 waters of this Territory for a period of not more than two (2) years.”



Committee on Judiciary, Public Safety and Consumer Protection

Twenty-Fourth Guam Legislature

2124-87

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 27, 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 203**, wishes to report back to the Legislature with its recommendation **TO PASS AS AMENDED.**

The voting record is as follows:

<u>7</u>	TO PASS
—	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

T W E N T Y - F O U R T H G U A M L E G I S L A T U R E

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 203 As Amended: An act to adding a new article 2 and repealing §69116 of Chapter 69, Title 10, GCA, relative to redefining and establishing penalties for operating a motorboat or vessel under the influence of alcohol or drugs.

<u>COMMITTEE MEMBERS</u>	<u>TO PASS</u>	<u>NOT PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>	<u>INITIAL</u>
1). Sen. Elizabeth Barrett-Anderson Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>EBA</i>
2). Sen. John C. Salas Vice-Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>JS</i>
3). Sen. Frank B. Aguon, Jr. Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>Frank B. Aguon, Jr.</i>
4). Sen. Anthony C. Blaz Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>ACB</i>
5). Sen. Joanne M.S. Brown Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6). Sen. Edwardo J. Cruz M.D. Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>EJC</i>
7). Sen. Mark Forbes Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>MF</i>
8). Sen. Vicente C. Pangelinan Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>VCP</i>
9). Speaker Antonio Unpingco Ex-Officio Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>AU</i>

TWENTY FOURTH GUAM LEGISLATURE

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

Committee Report

on

Bill No. 203: AN ACT TO ADD A NEW ARTICLE 2 AND REPEALING § 69116 OF CHAPTER 69, TITLE 10, GCA, RELATIVE TO REDIFINING AND ESTABLISHING PENALTIES FOR OPERATING A MOTORBOAT OR VESSEL UNDER THE INFLUENCE OF ALCOHOL OR DRUGS,

I. SUMMARY

The Committee on Judiciary, Public Safety and Consumer Protection held a public hearing on Wednesday, June 11, 1997 at 9:30 a.m. on Bill No. 203 at the Committee on Judiciary, Public Safety and Consumer Protection public hearing room. Public Notice was announced in the May 18, and June 3, 1997 issues of the Pacific Daily News.

Committee Members Present:

Senator Elizabeth Barrett-Anderson, Chairperson
Senator John C. Salas, Vice-Chairperson
Senator Edward J. Cruz M.D.
Senator V.C. Pangelinan
Senator Frank B. Aguon, Jr.

Providing Public Testimony on the Bill:

Brad Hokanson, GPD **oral**
Keith Mitzkewich, Marianas Yacht Club, **oral**
Gil Reyes, Chief, GFD, **oral**
Richard Asaro, Capt., U.S. Coast Guard, **oral**

Summary:

The stated purpose of this bill is to redefine and establish more severe penalties for offenses related to operating a motorboat or vessel while under the influence of alcohol or drugs.

Relationship to Existing Law:

The bill repeals the only existing law on the subject, 10GCA §69116(b) which provides:

“Under the influence of alcohol or drugs. No person shall operate any motorboat or vessel, or manipulate any water skis, aquaplane, surfboard, or similar device while under the influence of alcohol, or any narcotic drug, barbituate or marijuana.”

Per 10GCA §69129(c), the offense is a petty misdemeanor. (By operation of 9GCA §80.34 and §80.50, a petty misdemeanor is punishable by not more than 60 days imprisonment or \$500 fine, or both.)

The definition of two pertinent terms, “motorboat” and “vessel”, are set out in 10GCA §69101 (1) & (2) and would be applicable to the bill’s new provisions:

“(1) Vessel means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) Motorboat means any vessel not more than sixty-five (65) feet in length propelled by machinery whether or not such machinery is the principle source of propulsion.”

The bill essentially mirrors the provisions of Article 1 of the Safe Streets Act, 16 GCA Chapter 18, relating to motor vehicle offenses involving alcohol and controlled substances, and part of Article 2 of that Act, relating to “implied consent “.

II. Summary of Testimony

BRAD HOKANSON
Guam Police Department

Mr. Hokanson, as the person in charge of all boating safety aspects within the Guam Police Department testified in support of Bill 203.

KEITH MITZKEWICH
Marianas Yacht Club

Mr. Mitzkewich testified that they are generally in support of the Bill. He inquired about the definition of motorboat as it relates to sailboats.

MR. GIL REYES
Guam Fire Department

Fire Chief Reyes testified in favor of the bill and acknowledged the strong support of his staff for the bill. He recommended adding a Drug counseling section to the bill.

RICHARD ASARO
Commander, U.S. Coast Guard Guam

Captain Asaro supported the enactment of this bill as being supportive of the Coast Guard's promotion of boating safety.

HENRY TERLAJE
Acting Chief of Police, Guam Police Department

Acting Chief of Police Major Terlaje submitted written testimony (Exhibit "A") in favor of Bill 203.

SENATOR MARK C. CHARFAUROS
Primary Sponsor of Bill 203

Senator Charauros submitted a letter in support of his Bill 203 (Exhibit "B")

PHILLIP J. TYDINGCO
Acting Chief Prosecutor

In response to the Committee's request for clarification of certain aspects of the Bill, Acting Chief Prosecutor Phil Tydingco provided additional written testimony (Exhibit "C") in support of Bill 203 , its need, that it is not duplicative and his recommended amendments to the bill.

III. Findings and recommendations

The Committee on Judiciary, Public Safety and Consumer Protection finds support for the passage of Bill No. 203 with some amendments as recommended by Acting Chief Prosecutor and Committee Chief Legal Counsel. The Committee on Judiciary, Public Safety and Consumer Protection presents its report on Bill No. 203 with the recommendation **TO DO PASS** Bill No. 203 as amended by the Committee on Judiciary Public Safety and Consumer Protection.

"A"



Guam Police Department



Government of Guam

Bldg. No. 233, Central Avenue, Tiyan, Guam 96913
Tel: (671) 475-8473 (Switchboard) • (671) 475-8509/8512/8514
Fax: (671) 472-4036

**CARL T.C.
GUTIERREZ**
Governor of Guam

**MADELEINE Z.
BORDALLO**
Lieutenant Governor

MAJOR J. P. KAFNAS
Chief of Police
Acting

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

Dear Senator Barrett-Anderson:

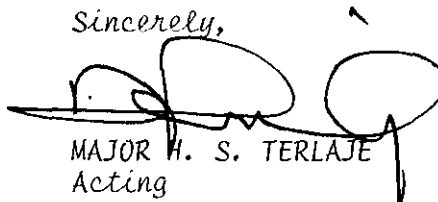
The Guam Police Department (GPD) thanks you for inviting us to provide you information regarding Bill 203 (COR).

The Guam Police Department is in full support of Bill 203 (COR). Although alcohol use has not been identified as a contributing factor in any recent boating accidents, this bill will help ensure that this trend continues.

A suggestion for an alternative punishment for first time offenders is to require the offender to complete a NASBLA (National Association of State Boating Law Administrators) approved boater education course. These courses can be taken at minimal cost through the Coast Guard Auxiliary. Course completion could be in addition to the proposed penalties or to allow the offender to mitigate a portion of the proposed penalties.

I trust that the GPD representatives in attendance at your hearing will provide you with as much information as is helpful.

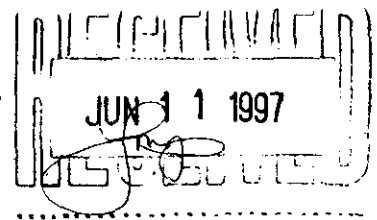
Sincerely,



MAJOR H. S. TERLAJE
Acting

Drug Free Guam Para Todos

"B"
Senator Mark C. Charlauros
Twenty-Fourth 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@ite.net

June 11, 1997

*EXHIBIT
"B"*

Senator Elizabeth Barrett-Anderson
Chairperson
Committee on Judiciary, Public
Safety and Consumer Protection
Ada's Plaza Center, Ste. 108-A
173 Aspinal Avenue
Agana, GU 96910

Dear Senator Barrett-Anderson:

I apologize for not being able to attend the public hearing scheduled for today. Unfortunately, due to an urgent matter that has just been brought to my attention, I will be attending a time critical meeting today. However, I would like to thank you for hearing several of my bills today, and would like to offer brief testimony on the bills.

Bill 88, AN ACT AMEND §1.17 AND §45.50 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PRELIMINARY EXAMINATIONS, is a bill I introduced last term shortly after the Oversight Hearings on the Attorney General's Office. Bill 88 would allow individuals accused of a felony a right to a preliminary examination. Current law provides that if an indictment is obtained, a preliminary examination is not required. The right to a preliminary examination would assist in ensuring that prosecutors are prepared to convict an individual after formal charges are executed. During the Oversight Hearings I held in July of 1996, it was discovered that several high profile cases were "slipping away" because prosecutors were obtaining indictments against individuals while actually unprepared to fully prosecute the individual.

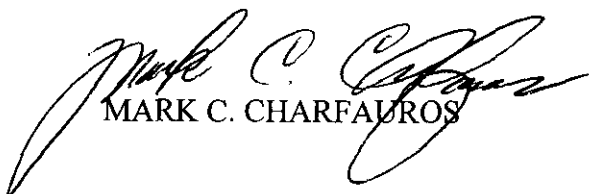
Bill 92, AN ACT TO ADD A NEW §90.36 TO 9 GCA, RELATIVE TO THE CREATION OF A CORRECTIONS OFFICER RESERVE CORPS, is a bill that would assist in alleviating security concerns at the Department of Corrections. I introduced this bill in the 23rd Guam Legislature at the request of the Director of Corrections. Quite simply, the bill would allow the Director to set up a program whereby individuals would be recruited to assist in the custody, security and rehabilitation goals of the Department.

Bill 111, AN ACT TO ADD A NEW SUBSECTION (d) TO SECTION 90.40 OF CHAPTER 90, 9 GCA, RELATIVE TO ESTABLISHING A STORE AT THE DEPARTMENT OF CORRECTIONS, is also a bill I introduced in the 23rd Guam Legislature. The bill would establish procedures and requirements for operating the store at the Department of Corrections. Although the store is already in operation, bill 111 would ensure that basic procurement and ethical guidelines are established.

Bill 203, AN ACT TO ADD A NEW ARTICLE 2 AND REPEAL §69116 OF CHAPTER 69, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO REDEFINING AND ESTABLISHING PENALTIES FOR OPERATING A MOTORBOAT OR VESSEL UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, is a bill that would ensure that the penalties associated with operating a motorboat or vessel under the influence of alcohol or drugs is consistent with the severity of the offense. In addition, bill 203 would establish procedures similar to enforcing drunk driving laws.

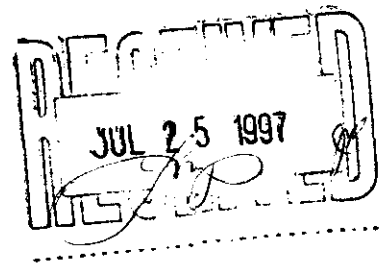
Again, I would like to thank you for considering these bills today. If you have any questions or concerns, please feel free to contact me.

Si Yu'os Ma'åse',



MARK C. CHARFAUROS

"C"



Ufisinan Hinirát Abugao
Tiritorian Guåhan

Carl T.C. Gutierrez
Maga'åhi
Governor

Calvin E. Holloway, Sr.
Hinirát Abugao
Attorney General

Madeleine Z. Bordallo
Tiñente Gubetnadora
Lt. Governor

Office of the Attorney General
Territory of Guam
Prosecution Division

Phillip J. Tydingco
Atkåden Abugådu
(Acting) Chief Prosecutor

July 24, 1997

Senator Elizabeth Barrett-Anderson
Chairperson
Committee on Judiciary, Public Safety
and Consumer Protection
24th Guam Legislature

Ref: Bill 203 - An Act to Adding a New Article 2 and Repealing § 69116 of Chapter 69, Title 10, Guam Code Annotated, Relative to Redefining and Establishing Penalties for Operating a Motorboat or Vessel under the Influence of Alcohol or Drugs

Dear Senator Barrett-Anderson:

Buenas yan Saluda!

Thank you for your request for input on Bill No. 203, dated July 9, 1997. I have reviewed the proposed legislation and will address your questions.

1. Bill No. 203 does not create a "duplication process", instead it represents an enhancement of the penalties for operating a motorboat or vessel under the influence of alcohol, etc. With this legislation in place, operators of motorboats and other vessels on Guam's waters will be held to the same standards of responsibility as operators of motor vehicles on Guam's roads.

2. In most jurisdictions, Boating Under the Influence provisions are separate from their Driving Under the Influence counterparts. The statutes governing the ownership and operation of motor vehicles and motorboats are detailed and located in separate Titles. The potential for conviction is not affected by the location of the statute in Title 10 as opposed to Title 16, but it is logical to keep the rules governing boating under Title 10.



Commonwealth Now!

Letter to Sen. Barrett-Anderson
Subj: Input on Bill No. 203
July 22, 1997

3. In order to achieve the goals of Bill No. 203, the following recommendations are made:

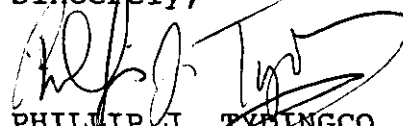
(a) The sentencing provisions of Bill No. 203 address the issue of the privilege to operate a motorboat or vessel after conviction. Section 69129(d) of the current law addresses the same issue, but is more lenient, and should be repealed.

(b) The Implied Consent Law of Bill No. 203, as it reads, does not address the consequences of a refusal to consent to a breath or blood test. Subdivision (f) of section 18201 in the Safe Streets Act states that a "refusal" to be tested may be used against the defendant at trial. This is important evidence to be used against the defendant. If this provision is not included, prosecution will be hampered and there will be no consequences for a refusal to submit to a test. Bill No. 203 would have no teeth.

Please contact me if you have any further questions regarding this legislation.

Dangkolo na Si Yu-os Ma-åse - Thank You very much!

Sincerely,



PHILIP J. TYDINGCO
(Acting) Chief Prosecutor

cc: Attorney General

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Commonwealth Now!

TWENTY-FOURTH GUAM LEGISLATURE

PUBLIC HEARING

SENATOR ELIZABETH BARRETT-ANDERSON

Chairperson, Committee on Judiciary, Public Safety and Consumer Protection

WITNESS SIGN-IN SHEET

Committee Hearing Room, 173 Aspinall Ave., Ada Plaza Center, Suite 108A, Agana, Guam 96910

Wednesday, June 11, 1997

Public Hearing on Bill No. 203

	NAME(Please print)	ORGANIZATION	My Testimony: Oral/Written	I am For Bill 203	I am Against Bill 203
1	BRAO HOKANSON	GPD	BOTH	✓	
2	KEITH MITZKEWICH	MAR. YACHT CLUB	(JUST LISTEN)	✓	
3	GIL REYES	GFS	"	✓	
4	R. J. ASARO	U.S. CG	ORAL	✓	
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FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

BBMR-F7

MAY 16 1997

Bill Number: 203

Date Received: 4/22/97

Amendatory Bill: Yes

Date Reviewed: 5/08/97

Department/Agency Affected: Guam Police Department

Department/Agency Head: Joseph Mafnas, Acting Chief

Total FY Appropriation to Date: \$22,896,524

Bill Title (preamble):

An act to add a new article 2 and repealing subsection 69116 of Chapter 69, Title 10, GCA, relative to redefining and establishing penalties for operating a motorboat or vessel under the influence of alcohol or drugs.

Change in Law: An act adding new subsections

Bill's Impact on Present Program Funding:

Increase x Decrease _____ Reallocation _____ No Change _____

Bill is for:

Operations x Capital Improvement _____ Other _____

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Public Safety			

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL						
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? -- IF NO, ADD'L AMOUNT REQUIRED \$

AGENCY/PERSON/DATE CONTACTED: _____

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND						
OTHER						
TOTAL						

ANALYST Christine D.F. Quichocho
 Christine D.F. Quichocho

DATE 5/8/97

DIRECTOR Joseph E. Rivera
 Joseph E. Rivera, Acting

MAY 16 1997
 DATE

FOOTNOTE: Bill no. 203 proposes to properly define and enforce the offense of operating a motorboat or vessel while an individual is under the influence of alcohol, drugs, or both. The Guam Police Department is engaged in patrolling our water ways. Since there is no additional operational appropriation, their current level will have to absorb the additional cost for effective enforcement of this act. Additionally, the Department of Corrections will be impacted to house additional persons convicted under this act.