I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 40 (EC)
As substituted by the Committee on
General Government Operations
and Organization and amended
on the Floor.

Introduced by: Frank T. Ishizaki
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AN ACT TO *AMEND* ARTICLE 3 OF CHAPTER 32 OF TITLE 17 GCA RELATIVE TO THE PEACE OFFICER STANDARDS AND TRAINING COMMISSION (POST); TO *AMEND* SECTION 5.55 OF ARTICLE 2 OF CHAPTER 5 OF TITLE 8 GCA; TO *AMEND* SECTIONS 32201 AND 32201.1 OF ARTICLE 2 OF CHAPTER 32 OF TITLE 17 GCA; TO *AMEND* SECTION 4203.1 OF ARTICLE 2 OF CHAPTER 4 OF TITLE 4 GCA; TO *AMEND* SUBSECTIONS 77114(a)(3) AND 77114(a)(4) OF CHAPTER 77 OF TITLE 10 GCA.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings. *I Liheslaturan Guåhan* finds that Guam's

law-enforcement community has not maintained a consistent standard of training for all its officers. Each law enforcement entity has implemented its own peace officer training requirements, which has resulted in the uneven qualifications among Guam's peace officers. This lack of standard training requirements has hampered the cooperation of law enforcement entities.

This enactment amends and re-establishes the Peace Officer Standards and Training Commission (POST) as an independent body that is not attached to any government instrumentality, thus permitting for the integration of existing criminal justice curricula offered by institutions of higher education. POST shall assure the development of uniform regulations and minimum professional standards to serve as the basis for operation of Guam's law enforcement entities.

While Mayors and Vice Mayors are peace officers by definition, but shall not be subject to certification requirements contained herein.

Section 2. Article 3 of Chapter 32 of Title 17 of the Guam Code Annotated is hereby *amended* to read as follows:

"**ARTICLE 3.**

PEACE OFFICER STANDARDS AND TRAINING COMMISSION

§32301. Definitions.

§32302. Created; Membership; Compensation; Meetings; Publications of Procedures; Standards for Certified Training; Powers and Duties.

§32302.10. Termination of Commission Membership upon Reorganization.

§32303. Executive Director; Appointment; Powers and Duties.

§32303.10. Temporary Vacancy of the Executive Director.

§32303.20. Nexus Cadre of Trainers.

§32304. Qualifications for Employment as a Peace Officer; Loss of Certification for Felony Conviction; Termination from Employment.

§32305. Certification Without Compliance with Requirements of §32304; Applicability of Civil Service Provisions.

§32306. POST Fund.

§32307. Saving Clause.

§32308. Conflicting Laws.

§32309. Effective Date.

§32301. Definitions. For purposes of this Article:

(a) *Commission shall* mean the Peace Officer Standards and Training Commission.

(b) *Peace Officer* for the purpose of this article, *shall* mean the Chief of Police and *all* sworn officers of the Guam Police Department including reservists; the Chief and all officers of the Guam Airport Police; the Chief and all officers of the Guam Port Authority Police; the Director of Corrections, all uniformed Correction Officers and Parole Officers as well as such rehabilitation personnel of the Department of Corrections as are designated by the Director of Corrections; the Director of Customs and all sworn officers of the Customs and Quarantine Agency; the Director and all employees of the Department of Youth Affairs who are engaged in juvenile detention and rehabilitation work as designated by the Director of the Department of Youth Affairs; the Chief and all Conservation Officers of the Division of Aquatic and Wildlife Resources of the Department of

Agriculture; the Chief and all Guam Park Patrol Officers of the Department of Parks and Recreation; the Attorney General and those employed by the Attorney General's Office whom he specifically designates; the Chief Marshal and all Marshals and the Chief of Probation and all Probation Officers of the Unified Guam Judiciary; all Fire Fighter Personnel engaged in the enforcement of the Fire Prevention Code, all Arson Investigators and those GFD employees whom the Fire Chief specifically designate.

§32302. Created; Membership; Compensation; Meetings; Publications of Procedures; Standards for Certified Training; Powers and Duties. (a) There is hereby created a Peace Officer Standards and Training Commission. The Commission *shall* be composed of the following members:

(1) the Chief of the Guam Police Department, *or* his designated representative;

(2) the Chief of the Guam Airport Police, *or* his designated representative;

(3) the Chief of the Guam Port Police, *or* his designated representative.

(4) the Attorney General, *or* his designated representative;

(5) the Director of Customs and Quarantine Agency, *or* his designated representative;

(6) the Director of the Department of Corrections, *or* his designated representative;

(7) the Director of the Department of Youth Affairs, *or* his designated representative;

(8) the Superintendent of the Guam Park Patrol Officers of

the Department of Parks and Recreation, *or* his designated representative;

(9) the Chief of the Division of Aquatic and Wildlife Resources of the Department of Agriculture, *or* his designated representative;

(10) one (1) person at large, selected by the Commission;

(11) one (1) non-voting representative from the University of Guam (UOG), appointed by the President;

(12) one (1) non-voting representative from the Guam Community College (GCC), appointed by the President;

(13) the Chief Marshal of the Unified Guam Judiciary, *or* his designated representative;

(14) the Chief of the Guam Fire Department, *or* his designated representative;

(15) the Chief Probation Officer of the Unified Guam Judiciary, *or* his designated representative;

(16) one (1) non-voting representative from the Department of Administration, appointed by the Director of Administration; and

(17) one (1) representative from the Mayors' Council of Guam.

(b) Members of the Commission *shall* receive no compensation, but *shall* be reimbursed under §§23103 and 23104 of Title 5 of the Guam Code Annotated for travel and per diem expenses incurred in the performance of their duties. For purposes of compensation, attendance at meetings of the Commission *shall* be deemed performance by a member of the duties of his local governmental employment.

(c) The Commission *shall* hold at least four (4) meetings per year.

(d) The Commission *shall* establish and publish its procedures.

(e) The Commission *shall* establish standards for certification of peace officer training.

(f) The Commission *shall* establish reasonable fees for the application and processing for the certification of peace officers.

(g) The Commission in coordination with affected agencies *shall* establish:

(1) requirements and minimum standards for the certification of peace officers;

(2) categories of peace officer certification with respect to the duties and requirements of respective fields;

(3) minimum qualifications for peace officer training instructors;

(4) minimum training requirements for peace officers;

(5) collaboration with training providers and educational institutions to establish core curriculum for all designated programs;

(6) categories *or* classifications of advanced in-service training programs and minimum courses of study and attendance requirements with respect to the categories or classifications; and

(7) a time frame for full compliance with Commission requirements by respective departments and agencies.

(h) The Commission *shall*:

(1) visit and inspect peace officer training programs *or* their components at any appropriate time;

(2) adopt such rules and regulations as it deems proper to

fully effectuate and carry out the purpose of this Article, pursuant to the Administrative Adjudication Law;

(3) prescribe reasonable minimum qualifications relating *solely* to the physical, mental and moral fitness of persons recruited, appointed *or* retained as peace officers by the government of Guam;

(4) deny, suspend *or* revoke certification of peace officers for substantial failure to comply with this Article or the rules of the Commission, pursuant to procedures policies enacted pursuant to the Administrative Adjudication Law;

(5) recommend to the respective appointing authorities qualifications of candidates for the offices of Chief of Police, the Chief Marshal, the Chief Probation Officer, the Director of Corrections, and the Director of Customs and Quarantine Agency;

(6) provide management survey and managerial assistance as requested by corrections and law enforcement agencies;

(7) provide by rule for the reciprocity and recognition of equivalent entry level core basic training at a training center by law enforcement officers of the federal government, states *or* territories of the United States, and, also require such additional training for certification as the Commission deems necessary;

(8) provide by rule for the reciprocity and recognition of law enforcement officers of the federal government, states *or* territories of the United States with five (5) *or* more years of law enforcement experience. The Commission may waive the equivalent number of hours of training that an officer obtained in another jurisdiction and may require such law officer to complete training in Guam law;

(9) provide by rule for temporary certification of peace officers who have previously completed basic peace officer training but have since left service in good standing, provided that said peace officers *shall* satisfy standards and training requirements as set by the Commission;

(10) provide by rule for temporary certification of peace officers from other jurisdictions who have completed basic peace officer training and have since left service in good standing, provided that said peace officers satisfy standards and training requirements as set by the Commission;

(11) establish supervisory, managerial, and executive level standards and certification for the agencies covered by this Chapter; and

(12) may enter into professional development agreements with the Guam Community College, the University of Guam, *or* another suitable institution.

§32302.10. Termination of Commission Membership upon Reorganization. A Commissioner who is a member of the Commission, pursuant to §32302(a) of this Chapter, *shall* immediately lose membership upon a reorganization of the agency which the member represents.

§32303. Executive Director; Appointment; Powers and Duties.

(a) The Executive Director of the Commission *shall* be appointed by and serve at the pleasure of the Commission. The Executive Director *shall* be the chief executive officer of the Commission. The Commission *shall* establish the minimum qualifications for the Executive Director.

(b) With the approval of the Commission, the Executive Director may:

(1) certify Peace Officer training programs *or* institutions;

(2) certify peace officers who have satisfactorily completed training programs mandated by this Act;

(3) consult and cooperate with peace officer training academies in the development of basic and continuing education training programs for peace officers;

(4) consult and cooperate with the Guam Community College, the University of Guam, other institutions of higher education, *or* any POST certified advanced training programs for the development of specialized courses of study on Guam for peace officers in the areas of police science, police administration, the social sciences and other related areas;

(5) consult and cooperate with other departments and agencies concerned with peace officer training;

(6) report to the Commission at regular meetings of the Commission and at other times as required to recommend denial, suspension *or* revocation of certification of a peace officer to the Commission as deemed necessary; and

(7) act as a voting member of the Commission only in case of a tie.

§32303.10. Temporary Vacancy of the Executive Director. *If* a temporary vacancy occurs in the position of Executive Director for any reason, the Commission *shall* select from among its voting members a designated

representative who *shall* become the Acting Executive Director until such time the Commission appoints a new Executive Director.

§32303.20. Nexus Cadre of Trainers.

(a) The Guam Police Department, Customs and Quarantine Agency, Guam Fire Department, Department of Corrections, and the Department of Law *shall* respectively designate one (1) *or* more qualified employees to participate in the cadre of trainers of the *Peace Officer Standards and Training Commission (POST).* The Commission, based on qualification and POST specialized training needs, *shall* establish training criteria for the cadre to train peace officer recruits for POST programs.

(b) The Commission may assign supervision and responsibility of a certified POST training program to a POST agency.

(c) Notwithstanding any other law affecting the reassignment of an employee as a POST trainer, the employee's participation *shall* be deemed part of his usual duties and he *shall* be compensated by his employing agency at his usual salary.

§32304. Qualifications for Employment as a Peace Officer; Loss of Certification for Felony Conviction; Termination from Employment.

(a) Within fifteen (15) days after the appointment, termination, resignation *or* death of any peace officer, written notice thereof *shall* be given to the Commission by the employing agency.

(b) No public official, Guam agency *or* any other person authorized by law to appoint peace officers on Guam *shall* appoint any person as a peace officer who does not meet the following qualifications. The person *shall*:

(1) be a United States citizen *or* a resident who is legally

authorized to work within the United States and its territories;

(2) be at least eighteen (18) years of age;

(3) be fingerprinted; local and national fingerprint files *shall* be searched to determine if the applicant has a criminal record;

(4) not have been convicted in any civilian *or* military court of a felony, a crime involving moral turpitude, a crime of domestic *or* family violence, regardless of whether he has been pardoned *or* commuted by *I Maga'lahen Guåhan* regarding such conviction;

(5) hold a high school diploma *or* evidence of an equivalent achievement;

(6) have good moral character as determined by a background investigation; the hiring agency *shall* complete a background investigation defined by the Commission of any applicant for employment as a peace officer before the applicant may be employed *or* begin training as a peace officer;

(7) be free of any physical, emotional or mental conditions which might adversely affect his performance of duty as a peace officer; physical condition *shall* be evaluated by a person licensed to practice medicine; emotional and mental conditions *shall* be evaluated by a licensed psychologist or psychiatrist; and

(8) pass an oral interview examination by the hiring agency.

(c) Notwithstanding any general, specific *or* local law *or* charter to the contrary, no person *shall* receive an original appointment on a permanent basis *or* hold an appointment on a permanent basis as a peace officer, unless the person has been awarded a certificate by the Executive Director attesting to his satisfactory completion of an approved peace officer basic training

program.

(d) Notwithstanding Subsection (c) of this Section, the Commission may waive the basic peace officer training program by reciprocity *or* equivalency pursuant to Subsections 32302(h)(8), (9), *or* (10) and certify applicants passing a written examination established by the Commission *or* an oral interview attesting to the applicant's ability in law enforcement. The applicant *shall* demonstrate that he satisfactorily completed a basic peace officer training program which, in the Commission's opinion, is comparable to that required by this Section.

(e) Notwithstanding any other law or Civil Service requirements, a person who is convicted of a felony, a crime involving moral turpitude, *or* a crime of domestic *or* family violence after his appointment as a peace officer is ineligible for continued employment as a peace officer. *If* the person has been certified under this Section, his certification *shall* be automatically revoked on the date of his conviction. The Executive Director *shall* notify the person and the person's employing agency upon revocation of certification under this Subsection.

(f) In the case of termination of a peace officer, the employing agency *shall* notify the Commission and the officer, in writing, of the termination setting forth in details the facts and reasons for the termination. *If* the officer is terminated for failure to comply with this Act, *or* rules promulgated under it, the notice *shall* so specify. Any officer who has been terminated may present a written statement to the Commission responding to the claims made against him *or* setting forth the facts and reasons for the termination as he believes them to be, and that statement *shall* become a permanent part of the file. A potential employer may contact the

Commission to inquire as to the facts and reasons an officer was terminated from any previous employing agency. Unless otherwise prohibited by law, the Commission *shall*, upon request, provide to the potential employer all pertinent information which is in its possession.

§32305. Certification without Compliance with Requirements of §32304; Applicability of Civil Service Provisions. (a) Notwithstanding any other provision within this Article, any person who has been employed on a permanent basis as a peace officer on Guam prior to the enactment hereof and who is currently employed as a peace officer *or* was previously employed as a peace officer for at least ten (10) years prior to enactment hereof, may be certified as a peace officer by the Executive Director without having complied with §32304(b) and (c).

(b) Nothing in this Act *shall* be construed to exempt any peace officer from the provisions *or* requirements of civil service.

(c) An employing agency may establish qualifications and standards for hiring and training that exceed the minimum qualifications and standards set by the Commission.

§32306. POST Fund. (a) The Commission may solicit, apply to *or* accept grants of money *or* materials *or* property of any kind from the Federal government, the government of Guam, any agency *or* political subdivision of the government of Guam *or* any person and business upon the terms and conditions imposed by the grantor. The Commission *shall* establish and collect fees for the services it performs.

Notwithstanding any other provision of law, all funds received by the Commission in accordance with this Chapter *shall* be deposited within five (5) days of receipt with the Treasurer of Guam for credit to the "*POST Fund*" (Fund)

established pursuant to Subsection (b) of this Section. Funds *shall* be used by the Commission to carry out its functions for administration, operations, training costs of peace officers, management surveys, research, management assistance, and other operating expenses and encumbrances of the Commission in performing its duties and obligations as prescribed in this Chapter. The Executive Director *shall* be the Certifying Officer of the Fund.

(b) There is hereby created, separate and apart from other funds of the government of Guam, a fund to be known as the "*POST Fund*" (Fund). The Fund *shall* not be commingled with the General Fund and *shall* be kept in a separate account. The Fund *shall* be under the control of the Commission and the Director of Administration (Director). The Director *shall* administer the Fund and release the necessary monies upon request for expenditures by the Executive Director authorized by this Section. The Fund *shall* not be used for any purposes other than those enumerated *or* reasonably inferred herein *or* for purposes other than those relating to the Commission. In exercising its functions, the Commission *shall* endeavor to minimize costs of administration so that a maximum of Funds will be expended exclusively for the POST Commission for the purpose of providing training and other services to law enforcement agencies. The Director of Administration *shall* make a quarterly report to *I Maga'lahen Guåhan* and *I Liheslaturan Guåhan* of the condition of, and activity within the Fund.

(c) The POST Fund is hereby *excluded* from any transfer authority given to *I Maga'lahen Guåhan.* Any subsequent grant of authority to *I Maga'lahen Guåhan* to transfer funds categorically *or* in general from *I Liheslaturan Guåhan* must specifically identify the POST Fund as a source.

§**32307. Saving Clause.** This Act does *not* explicitly pre-empt other laws *or* regulations that preserve to a greater degree the powers of *I Maga'lahen*

Guåhan or the Judiciary; *provided*, that such laws *or* regulations are consistent, and do *not* otherwise restrict *or* interfere with, the operation *or* enforcement of this Act.

§32308. Conflicting Laws.

(a) Federal Supremacy. This Article does *not* restrict any person *or* government instrumentality from complying with Federal law *or* regulations.

(b) Prior Conflicting Acts. *If* a conflict arises between this Article and other local laws *or* regulations concerning training standards and certification of peace officers, this Article *shall* control.

§32309. Effective Date. The Commission *shall* be established and become operational immediately. Incumbent peace officers *shall* have thirty-six (36) months from the date of the enactment of the rules and regulations required by §32302(h), to be POST certified, provided that the Commission may grant extensions to protect the integrity of agency operations."

Section 3. §5.55 of Article 2 of Chapter 5 of Title 8 of the Guam Code Annotated is hereby *amended* to read as follows:

"§5.55. Peace Officer Defined. As used in this Code, peace officer includes:

(a) All Municipal Mayors;

(b) All Municipal Vice Mayors;

(c) The Chief of Police and all Officers of the Guam Police Department;

(d) The Director of Corrections, Correction and Parole Officers, and Rehabilitative Personnel of the Department of Corrections as designated by the Director of Corrections;

(e) The Attorney General and those investigators employed

by the Attorney General's Office whom the Attorney General specifically designates;

(f) The Director of Customs, Customs and Quarantine Officers of the Customs and Quarantine Agency, and those persons under the service of the Agency whom the Director of Customs specifically designates;

(g) The Chief of the Division of Aquatic and Wildlife Resources and Conservation Officers of the Division of Aquatic and Wildlife Resources of the Department of Agriculture.

(h) Compliance Officers and Criminal Investigation Supervisors and Criminal Tax Investigators of the Department of Revenue and Taxation;

(i) The Chief Marshal, Marshals, and Special Deputy Marshals of the Judiciary;

(j) The Director and employees of the Department of Youth Affairs who are engaged in juvenile detention and rehabilitation work as designated by the Director of the Department of Youth Affairs.

(k) The Chief Probation Officer and all probation officers of the Judiciary;

(l) Criminal Investigators and Special Agents of the United States Government as defined as any individual duly authorized by a department, agency *or* armed force of the United States to conduct *or* engage in investigations of *or* prosecutions for violations of the criminal laws of the United States. Fire Personnel when engaged in the enforcement of the Fire Prevention Code, all Arson Investigators, and those designated by the Fire Chief of the Guam Fire Department;

(m) The Chief of Guam Airport Police and all Guam Airport Police Officers;

(n) The Chief and all of the Jose D. Leon Guerrero Guam Port Authority Police Officers; and

(o) The Chief and all Guam Park Patrol Officers of the Department of Parks and Recreation."

Section 4. §32201 of Article 2 of Chapter 32 of Title 17 of the Guam Code Annotated is hereby *amended* to read as follows:

"**§32201. Guam Community College Training Programs and Unauthorized Training Liability**. There is within the Guam Community College a training academy herein referred to as the Guam Community College Training Programs, which *shall* provide support for:

(1) Local public safety training of all government of Guam personnel defined as peace officers in accordance with §32301(b) of Article 3 of Chapter 32 of Title 17 of the Guam Code Annotated meeting all public safety training standards. This includes the establishment of a trainer program in conjunction with the respective public safety agencies/departments, as provided for in §32201.10.

(2) All training within a technical/trade institution profession. This includes all current and planned programs under the Guam Community College's purview;

(3) *Shall* be a training agency for the Commission. Any references to "in-house" training and specialized training *shall* be administered by the respective agencies and separated from the initial requirement for academy training purposes. All certification made *shall* be limited to POST academy recruits *or* such certifications as

promulgated by POST.

It is hereby established that any taxpayer may sue pursuant to 5 GCA §7103A to hold Directors of agencies/departments personally liable for expending money without proper appropriation, without proper authority, illegally *or* contrary to law with regard to training of law enforcement personnel. Any liabilities resulting from personnel not certified under the "POST" Academy will be the personal responsibility of the Director/ Agency Head and *shall* not be covered under the color of law."

Section 5. §32201.10 of Article 2 of Chapter 32 of Title 17 of the Guam Code Annotated is hereby *repealed* and *re-enacted* to read as follows:

"**§32201.10. Cadre of Trainers.** Pursuant to 17 GCA Chapter 32 Article 2 §32301.10. establishing the POST Cadre of Trainers, the Guam Community College *shall* enter into agreements with the Peace Officer Standards and Training Commission towards assigning trainers for POST certified training."

Section 6. Section 4203.1 of Article 2 of Chapter 4 of Title 4 of the Guam Code Annotated is hereby *amended* to read as follows:

"**§4203.1. Prohibition: Convicted Felons.** No person *shall* be employed as a peace officer as defined in 8 GCA §5.55(c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p) who has been previously convicted of a felony in any civilian or military court, a crime involving moral turpitude, a crime of domestic *or* family violence, regardless of whether he was pardoned *or* commuted by *I Maga'lahen Guåhan* regarding such a conviction."

Section 7. Subsection 77114(a)(3) and Subsection 77114(a)(4) of Chapter 77 of Title 10 of the Guam Code Annotated is hereby *amended* to read as follows:

"(3) be over the age of eighteen (18) years;

(4) be a high school graduate *or* equivalent, but the POST Commission may set higher academic qualifications for all applicants as the Commission considers necessary;"

Section 8. Effective Date. The provisions of this Act *shall* take effect immediately.

Section 9. Severability. *If* any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.