I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 214-31 (COR), "AN ACT TO *AMEND* §40105(b) OF CHAPTER 40, TITLE 7, GUAM CODE ANNOTATED; AND TO *REPEAL* AND *REENACT* §§30.80 THROUGH 30.80.5 OF CHAPTER 30, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO DEFERRED PLEAS FOR DOMESTIC VIOLENCE ABUSERS,"** was on the 19th day of September, 2011, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 20th day of Sept, 2011, at 4:10 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 214-31 (COR)
As substituted by the Committee on Public Safety,
Law Enforcement and Judiciary; and amended on the Floor.

Introduced by: V. Anthony Ada
B. J.F. Cruz
Aline A. Yamashita, Ph.D.
Adolpho B. Palacios, Sr.
T. C. Ada
F. F. Blas, Jr.
Chris M. Dueñas
Judith P. Guthertz, DPA
Sam Mabini, Ph.D.
T. R. Muña Barnes
v. c. pangelinan
Dennis G. Rodriguez, Jr.
R. J. Respicio
M. Silva Taijeron
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §40105(b) OF CHAPTER 40, TITLE 7, GUAM CODE ANNOTATED; AND TO *REPEAL* AND *REENACT* §§30.80 THROUGH 30.80.5 OF CHAPTER 30, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO DEFERRED PLEAS FOR DOMESTIC VIOLENCE ABUSERS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that statistics from the Bureau of Justice, the National Coalition Against Domestic Violence, the American Bar Association, and most national victims' support

groups show that abusers who inflict serious bodily injury or death upon a spouse, domestic partner or other family member have a history of escalating and unabated abusive behavior. These organizations have also found that if first-time offenders receive counseling, education and in some cases, clinical treatment; they are less likely to reoffend.

Many states and Guam have diversion programs that allow certain first-time domestic violence abusers to obtain such counseling, education and treatment in exchange for expungement of the arrest record, waiver of prosecution and elimination of prison sentences and criminal records relating to such first offense. The problem that many states have found with diversion programs is that in ten percent (10%) to thirty percent (30%) of these cases, the abusers fail to complete the diversion requirements within the two (2) to three (3) years normally allowed. Prosecutors have found it difficult if not impossible to get convictions on cases that are two (2) to three (3) years old.

Many states have found a much higher completion rate of domestic abuser rehabilitation programs where the abusers are allowed to enter a "deferred plea". In such states, an abuser enters a deferred guilty plea that is vacated once he completes the requirements of his deferred plea agreement. If he fails to complete the agreement, the court accepts the guilty plea. Deferred plea legislation has faced opposition from defense attorneys in states contemplating changing their diversion programs to deferred plea agreements. The opponents have countered that deferred plea programs will lead to more accused abusers seeking to "take their chances at trial" rather than entering a deferred admission of guilt. By and large, however, communities, district attorneys and victims rights groups have largely embraced such legislation.

I Liheslaturan further finds that obtaining justice for victims of domestic violence largely outweigh the desires of their abusers.

It is the intent of *I Liheslatura* to replace Guam's domestic violence diversion program with a deferred plea program.

Section 2. Relief. §40105(b) of Chapter 40, Title 7, Guam Code Annotated, is *amended* to read as follows:

"(b) Any protection order or approved consent agreement *shall* be for a fixed period of time as the court deems appropriate. The court may amend its order or agreement at any time upon subsequent petition or motion filed by either party."

Section 3. Deferred Guilty Plea for Family Violence. §§30.80 through 30.80.5 of Chapter 30, Title 9, Guam Code Annotated, are *repealed* and *reenacted* to read as follows:

"**§ 30.80. Deferred Guilty Plea for Family Violence.** Upon a proper motion, when a defendant voluntarily pleads guilty, prior to the commencement of trial, to a misdemeanor charge of family violence, as defined in this Chapter, he or she is found eligible for a deferred guilty plea pursuant to §30.80.1 of this Chapter, and the defendant agrees to participate in education, counseling and/or treatment program(s) as directed by the court, the court may defer criminal proceedings until such a time as may be required for the defendant to complete the education, counseling and/or treatment program(s). Upon the defendant's completion of the period designated by the court and in compliance with the terms and conditions established, the court may discharge the defendant and dismiss the charge against the defendant. Such discharge of the defendant and dismissal of the case *shall* be without adjudication of guilt and *shall* eliminate any civil admission of guilt and is not a conviction.

§ 30.80.1. Deferred Plea Eligibility.

Notwithstanding any other provision of law, and upon the determination of the judge, this §30.80.1 *shall* apply whenever a case is before the court upon an accusatory pleading for any criminal act against a family or household member as defined in Subsection (b) of §30.10 of this Chapter.

(a) The following persons are ineligible for the deferred guilty plea for family violence process:

(1) a defendant who has a felony conviction for any offense involving violence within seven (7) years prior to the alleged commission of the charged offense;

(2) a defendant who has participated in a diversion or deferred plea program for family violence, or a similar offense in Guam or another locality;

(3) a defendant who has been sentenced for a violation of §30.40 of this Chapter within one (1) year prior to the alleged commission of the charged offense; or

(4) a defendant whose current charge involves serious bodily injury as defined in Subsection (c) of §16.10, Chapter 16 of this Title, or criminal sexual conduct involving sexual penetration as defined in Item (9) of Subsection (a) of §25.10, Chapter 25 of this Title, *unless* the court finds that due to unusual circumstances deferral of the criminal proceedings is manifestly in the interest of justice.

(b) The fact that a defendant is *not* made ineligible by Subsection (a) of this §30.80.1 *does not* automatically entitle a defendant to the deferred guilty plea for family violence.

(c) The prosecuting attorney *shall* determine whether the defendant is ineligible for deferral by reason of any of the factors set forth in Subsection (a) of this §30.80.1. If the prosecutor finds that the person is not ineligible, and will agree to a deferred plea, the prosecutor *shall* notify the defendant.

(d) If the prosecutor finds that the defendant is ineligible, or if the prosecutor will *not* agree to a deferral although the defendant is *not* excluded by reason of Subsection (a) of this §30.80.1, the prosecutor *shall* notify the defendant.

(e) Any defendant who is *not* specifically ineligible for the deferral process pursuant to Subsection (a) of this §30.80.1 may apply to the court, by noticed motion for an order granting a deferred plea. The prosecuting attorney may oppose this application.

§ 30.80.2. Deferred Guilty Plea Hearing.

(a) Upon noticed motion, the court *shall* hold a hearing and, after consideration of any and all information the court believes to be relevant to its decision, the court *shall* determine if the defendant consents to further proceedings under this §30.80.2 and waives his or her right to a speedy trial, and if the defendant should be allowed to enter a deferred guilty plea in the criminal proceedings and referred for education, counseling and/or treatment program(s) directed specifically to the violent conduct of the defendant. The court, in determining the defendant's eligibility for a deferred guilty plea, *shall* consider the nature and extent of the injury inflicted upon the victim, any prior incidents of family violence by the defendant, and any factors which would adversely influence the likelihood of successful completion of the deferred guilty plea agreement. If the court *does not* deem the defendant a person who would be benefited by a deferred guilty plea, or if the

defendant *does not* consent to participate, the criminal proceedings *shall* continue as in any other case. If the court accepts the deferred plea agreement, the court *shall* make inquiry into the financial condition of the defendant and upon a finding that the defendant is able in whole or part to pay the expense of such counseling the court may order him or her to pay for all or part of such expense.

Nothing in this Subsection shall prohibit the placement of a defendant in another appropriate counseling program if the court determines that there is no available education and/or treatment program.

(b) At such time that the defendant's plea in a case is deferred, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of him or her *shall* be exonerated, and the court *shall* enter an order so directing.

(c) The period during which further criminal proceedings against a person may be deferred pursuant to this Section *shall* be *no less than* one (1) year, and *no more than* three (3) years.

(d) The court *shall* set forth in writing or state on the record its reason for granting or denying a deferred plea agreement. The court's decision in such a matter *shall* be final and *shall not* constitute an appealable order.

§ 30.80.3. Enforcement of a Deferred Plea Proceedings; Dismissal. If it appears to the prosecuting attorney, the court or the probation department that the defendant under §30.80.1 of this Chapter is performing unsatisfactorily in the assigned program, or that the defendant is *not* benefiting from education, counseling and/or treatment program(s), or that he or she has been convicted of any offense involving violence, after notice to the defendant, and upon motion by the prosecuting attorney or on

the court's own motion, the court *shall* hold a hearing to determine whether the defendant *shall* be sentenced accordingly. If the court finds by substantial evidence that the defendant is *not* performing satisfactorily in the assigned program(s), or that the defendant is *not* benefiting from the deferral, or the court finds that the defendant has been convicted of a crime as set out above, the criminal case *shall* be referred back to the court for adjudication. If the defendant has performed satisfactorily during the deferral period, at the end of the period of deferral, the criminal charges *shall* be dismissed upon motion or application of the defendant.

§ 30.80.4. Use of Arrest Record Following Successful Completion of Deferred Plea Agreement. Any records filed with the Guam Police Department and the Office of the Attorney General, Prosecution Division, *shall* set out the disposition of those cases for which a deferred guilty plea has been dismissed pursuant to §30.80.1 of this Chapter. Upon successful completion of a deferred plea agreement, the arrest upon which the deferral of plea was based *shall* be expunged, as provided by Chapter 11 of Title 8, Guam Code Annotated. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was *not* arrested, or that his/her plea was deferred for such offense. A record pertaining to an arrest resulting in successful completion of the deferred plea agreement *shall not*, without the defendant's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate. Failure to affirm or acknowledge a deferred plea, following successful completion of a deferred plea agreement, on any application for employment, benefit, license, or certificate, or in any affidavit is *not* perjury or an unsworn falsification.

§ 30.80.5. Counseling and Education Programs.

(a) If a person is ordered to complete education, counseling and/or treatment program(s) as a result of being in diversion, entering a deferred plea of guilty to family violence, or is adjudged guilty of family violence, he or she *shall* be ordered to pay a fee to the Superior Court of Guam for such service.

(b) The fee *shall* be set by order of the Judicial Council.

(c) The fee *shall* be paid into a revolving fund hereby established and maintained apart from other funds of the Superior Court of Guam. The Court Administrator of the Superior Court of Guam *shall* be the certifying officer for the Fund. The revolving fund *shall* be expended by the Superior Court of Guam to hire, as independent contractors, licensed individual and family counselors who *shall* conduct either group sessions or individual sessions for the perpetrators of family violence, victims of family violence, or children who have witnessed family violence, and to purchase supplies and therapeutic curricula materials."

Section 4. Effective Date. This Act *shall* be effective one hundred eighty (180) days after enactment.