I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

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

This is to certify that **Substitute Bill No. 273-32 (COR), "AN ACT TO *REPEAL* AND *REENACT* §70.35 OF CHAPTER 70, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO INVASION OF PRIVACY, CRIMINAL VOYEUERISM AND VIDEO VOYEURISM,"** was on the 15th day of April, 2014, 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 16 day of April, 2014, at 1:10 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 DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

FILE

Bill No. 273-32 (COR)
As substituted by the Committee on Guam U.S. Military Relocation, Homeland Security, Veterans' Affairs, and the Judiciary, and the Author; and amended on the Floor.

Introduced by: Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.
T. R. Muña Barnes
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
Michael F. Q. San Nicolas
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
B. J.F. Cruz

AN ACT TO *REPEAL* AND *REENACT* §70.35 OF CHAPTER 70, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO INVASION OF PRIVACY, CRIMINAL VOYEUERISM AND VIDEO VOYEURISM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the community of Guam is disturbed that its laws have not kept pace with audio, video and electronically digital camera technology which, though designed to heighten the quality of life, can also be used for nefarious or perverse purposes. Recently, a man, convicted for using electronic audio/video technology or cameras

to engage in surreptitious surveillance of women using restroom facilities, only faced a misdemeanor penalty. The victims in this case suffered not only a gross and severe invasion of their privacy, but a violation of their personal and physical dignity, in addition to other psychological harm. *I Liheslatura* intends to address this serious problem which bears in mind the need to balance privacy rights in circumstances where surveillance may be legitimate. Thus, our criminal statutes for invasion of privacy, or our version of criminal voyeurism, is in need of updating and replacement.

Section 2. § 70.35 of Chapter 70 of Title 9, Guam Code Annotated, is hereby *repealed* and *reenacted* to read as follows:

"**§ 70.35. Invasion of Privacy or Criminal Voyeurism and Video Voyeurism; Penalty; Definitions.**

(a) A person commits a misdemeanor if, except in the execution of a public duty or as authorized by law, the person intentionally or knowingly:

(1) trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place or in a place where an individual has a reasonable expectation of privacy;

(2) peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;

(3) trespasses on property for the sexual gratification of the actor;

(4) installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in

that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;

(5) intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this Subsection (5) *does not* apply to:

(A) overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or

(B) interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use;

(6) installs or uses, or both, in any private place or in a place where an individual has a reasonable expectation of privacy, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place, including another person in a stage of undress or sexual activity;

(7) covertly records or broadcasts an image of another person's intimate area underneath clothing, by use of any device, and that image is taken while that person is in a public place and without that person's consent;

(8) divulges, without the consent of the sender or the receiver, the existence or contents of any messages or photographic image by telephone, telegraph, letter, electronic transmission, or other

means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted or if the accused learned of the message or photographic image in the course of employment with an agency engaged in transmitting it; or

(9) knowingly possesses materials created under circumstances prohibited in Subsection (b) below.

(10) This Subsection (a) *shall not* apply to any dissemination, distribution, or transfer of images subject to this Subsection by an electronic communication service provider or remote storage service in the ordinary course of its business.

(11) In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this Subsection (a).

(b) A person commits a felony in the third degree, if, except in the execution of a public duty or as authorized by law, when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other person, or for the purpose of annoying, harassing or intimidating any other person, the person intentionally or knowingly installs or uses, or both, in any private place or in a place where an individual has a reasonable expectation of privacy, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity. The court may order the destruction of any recording made in violation of this Subsection (b).

(c) A person commits the crime of video voyeurism, which is a felony in the second degree, if, except in the execution of a public duty or as authorized by law, when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other persons, or for the purpose of annoying, harassing or intimidating any other person, the person intentionally or knowingly disseminates, publishes or sells any image or images of the intimate areas of another person or persons without the consent of such other person or persons and with knowledge that such image or images were obtained. The court may order the destruction of any recording made in violation of this Subsection (c).

(d) Definitions for the purpose of this Section:

(1) *broadcast* means the electronic transmittal of a visual image with the intent that it be viewed by a person or persons;

(2) *disseminate* means to make available by any means to any person;

(3) *electronic communication* means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo optical system;

(4) *electronic communication service provider* means any person engaged in the offering or sale of electronic communication services to the public;

(5) *electronic communication system* means any wire, radio, electromagnetic, photo-optical, or photo-electronic facilities for the

transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications, including e-mail, web hosting, multimedia messaging services, and remote storage services offered by an electronic communication service provider;

(6) *imaging device* means any instrument capable of recording, storing,viewing or transmitting visual images;

(7) *intimate areas* means any portion of a person's underwear, pubic area, anus, buttocks, vulva, genitals, or female breast;

(8) *intimate areas underneath clothing* does not include intimate areas visible through a person's clothing or intimate areas exposed in public;

(9) *person* means any natural person, corporation, partnership, firm, association, joint venture or any other recognized legal entity or any agent or servant thereof;

(10) *place where a person has a reasonable expectation of privacy* means:

(A) a place where a reasonable person would believe that he could undress, be undressed or engage in sexual activity in privacy, without concern that he or she is being viewed, photographed, filmed or otherwise recorded by an imaging device; or

(B) a place where a person might reasonably expect to be safe from casual or hostile surveillance by an imaging device; or

(C) any public place where a person, by taking reasonable steps to conceal intimate areas, should be free from the viewing, recording, storing or transmitting of images obtained by imaging devices designed to overcome the barriers created by a person's covering of intimate areas;

(11) *public place* means an area generally open to the public, regardless of whether it is privately owned, and includes, but is *not* limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses, tunnels, buildings, stores, and restaurants;

(12) *publish* means to:

(A) disseminate with the intent that such image or images be made available by any means to any person; or

(B) disseminate with the intent that such images be sold by another person; or

(C) post, present, display, exhibit, circulate, advertise or allow access by any means so as to make an image or images available to the public; or

(D) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means and to make such image or images available to the public;

(13) *remote storage service* means the provision to the public of computer storage or processing services by means of an electronic communication system;

(14) *sell* means to disseminate to another person, or to publish, in exchange for something of value.

(e) Notwithstanding any law to the contrary, any individual convicted of a criminal offense under this § 70.35 *shall* be registered on the Crimes Against Minors and Sex Offender Registry in Chapter 89 of Title 9, GCA, as follows: a level three offender for a misdemeanor conviction under this § 70.35; a level two offender for a felony in the third degree conviction under this § 70.35; and a level one offender for a second degree felony under this § 70.35."

Section 3. Effective Date. This Act *shall* become effective upon enactment.

Section 4. Severability. *If* any of the provisions of this law 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 law which can be given effect without the invalid provisions or application, and to this end the provisions of this law are severable.

LEGISLATIVE SESSION

I MINA'TRENTAI DOS NA LIHESLATURAN

2014 (SECOND) Regular Session

Voting Sheet

Bill No. 273-32 (COR)

Speaker Antonio R. Unipingco Legislative Session Hall
April 15, 2014

NAME	Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA	✓				
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ	✓				
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE	✓				
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Vicente (ben) Cabrera PANGELINAN	✓				
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓				
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				
TOTAL	15				
	Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

I = Pass