

9 GCA CRIMES AND CORRECTIONS
CH. 19 ASSAULT, RECKLESS ENDANGERING, TERRORIZING

CHAPTER 19
ASSAULT, RECKLESS ENDANGERING, TERRORIZING

- § 19.10 General Definitions.
- § 19.20 Aggravated Assault; Defined and Punished.
- § 19.30 Assault; Defined and Punished.
- § 19.40 Reckless Conduct; Defined and Punished.
- § 19.50 Terroristic Conduct; Defined and Punished.
- § 19.60 Terrorizing; Defined and Punished.
- § 19.69 Definitions.
- § 19.70 Stalking.

§ 19.10. General Definitions.

As used in this Chapter, the terms bodily injury, serious bodily injury and deadly weapon have the meanings provided by § 16.10.

SOURCE: M.P.C. § 211.0; See Mass. ch. 263, § 3; N.J. § 2C:11-1.

COMMENT: Chapter 19 is based on Model Penal Code §§ 211.0 through 211.3 with modifications proposed in California. This Chapter completely eliminates all of the various assault-type crimes found in the former Penal Code. In the former Penal Code the crimes of "assault with intent to..." now become "attempts to commit..." as set forth in Chapter 13 of this Code. (§ 13.10) Specifically, the following major changes have been adopted:

- (a) Consolidation of the assault and battery offenses;
- (b) Elimination of the offenses of "assault with the intent to...";
- (c) Creation of a general "reckless conduct" offense;
- (d) Special treatment of the use of deadly weapons; and
- (e) Creation of a general "terroristic conduct" offense.

The principal factors upon which is based the grading structure set forth in the law are: The actor's capability, the seriousness of the injury inflicted or intended, and the mode of a conduct. No assault offense has been classified as a first-degree felony; the classifications range from petty misdemeanor to second degree felony. See California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project 161-167 (Tent. Draft No. 2, June 1968).

Former Penal Code §§ 248 through 256 (libel) and §§ 258 through 260a (slander) provide for a crime of criminal defamation. Considering the Supreme Court developments relative to public officials and the total lack of prosecution for criminal libel and criminal slander on Guam, the Commission felt that these sections should be omitted from the Criminal and Correctional Code.

§ 19.20. Aggravated Assault; Defined & Punished.

9 GCA CRIMES AND CORRECTIONS
CH. 19 ASSAULT, RECKLESS ENDANGERING, TERRORIZING

(a) A person is guilty of aggravated assault if he either recklessly causes or attempts to cause:

- (1) serious bodily injury to another in circumstances manifesting extreme indifference to the value of human life;
- (2) serious bodily injury to another;
- (3) bodily injury to another with a deadly weapon.

(b) Aggravated assault under Paragraph (1) of Subsection (a) is a felony of the second degree; aggravated assault under Paragraphs (2) or (3) or Subsection (a) is a felony of the third degree; provided that any person convicted of aggravated assault shall not be eligible for work release or educational programs outside the confines of prison.

SOURCE: G.P.C. §§ 149, 203-204, 225, 227, 240-246, 273, 347, 360, 361; M.P.C. § 211.2(2); *Cal. § 1500 (T.D.2 1968); Cal. §§ 820, 824 (1971); Mass. ch. 265, §§ 6 and 7; N.J. 2C:12-1. Amended by P.L. 19-6:8.

CROSS-REFERENCES: § 53.35 (resisting arrest); § 55.40 (obstructing fire control operations); § 58.20 (aggravated escape), all of this Title.

COMMENT: This crime of "aggravated assault" is committed by either the causing of, or attempting, the injuries set forth within the Section. Actually, there are two crimes created in this one Section, the first being under § 19.20(a)(1), which is a felony of second degree; and the second being found under Subsections (a)(2) and (a)(3), both of which are felonies of the third degree.

§ 19.30. Assault; Defined & Punished.

(a) A person is guilty of assault if he:

- (1) either recklessly causes or attempts to cause bodily injury to another;
- (2) recklessly uses a deadly weapon in such a manner as to place another in danger of bodily injury; or
- (3) by physical menace intentionally puts or attempts to put another in fear of imminent bodily injury.

(b) An assault against a peace officer who is performing his official duties as a peace officer is a felony of the third degree if the perpetrator knew *or* should have known that the victim was a peace officer. In any assault against a peace officer, the jury *shall*, with any finding of guilty, also return a finding as to whether the perpetrator had actual knowledge that the victim was a peace officer. *If* the jury finds that the perpetrator had actual knowledge that the victim was a peace officer, the court *shall* impose a

9 GCA CRIMES AND CORRECTIONS
CH. 19 ASSAULT, RECKLESS ENDANGERING, TERRORIZING

minimum sentence of one (1) year in prison without suspension, probation, parole, *or* work release. For purposes of this §19.30, *peace officer* means one so defined in §5.55, Title 8, Guam Code Annotated, and to also include those individuals serving in a volunteer law enforcement capacity within any government of Guam law enforcement entity.

(c) An assault committed by a peace officer on a person in his custody or control, without any provocation whatsoever and with the use of excessive force, is a felony of the third degree.

(d) An assault committed in a fight or scuffle entered into by mutual consent is a petty misdemeanor.

(e) Any other assault is a misdemeanor.

SOURCE: G.P.C. §§ 149, 225, 227, 240-243, 245, 273, 347, 361, 380, 417, 601; M.P.C. § 211.1(1); *Cal. § 1510 (T.D.2 1968); Cal. §§ 824, 832, 836 (1971); Mass. ch. 265, §§ 8 and 11; N.J. § 2C:12-1; amended by P.L. 20-226:1. Subsection (b) amended by P.L. 29-095:1 (July 22, 2008).

COMMENT: § 19.30 supersedes a variety of former Penal Code sections with the following consequence. The Guam Penal Code distinguishes between assault and battery with respect to both definition and penalty. The new definition of assault includes both such former offenses.

Guam Penal Code § 240 required a "present ability" for an assault. No specific inclusion exists under the present section as the general attempt provisions will be controlling on this issue.

This Section specifically provides that an assault can be committed recklessly, a lower level of culpability than the Guam Penal Code language of "attempt to commit" or "willful and unlawful" infliction of injury. (Guam Penal Code §§ 240 and 242) California is equivocal on the issue and this Section probably represents the existing state of California law. In any event, it is to be read as part of this Code and not part of one or other of the California lines of authority based upon law which has not been enacted here.

The penalty for assault is a misdemeanor unless the injury was caused by a typical fight or scuffle entered into by mutual consent, the latter being a petty misdemeanor. It would be necessary, therefore, to present evidence in such cases to show that the defendant victimized the victim without his consent in order to obtain the higher penalty. Likewise, a defense to the higher penalty would appear to be that the fight was started upon the mutual consent of the parties. What is a mutual consent will have to be determined by a jury. Instructions must be developed for this instance.

§ 19.40. Reckless Conduct; Defined & Punished.

(a) A person is guilty of reckless conduct if he:

9 GCA CRIMES AND CORRECTIONS
CH. 19 ASSAULT, RECKLESS ENDANGERING, TERRORIZING

(1) recklessly engages in conduct which unjustifiably places or may place another in danger of death or serious bodily injury;

(2) intentionally points a firearm at or in the direction of another, whether or not the defendant believes it to be loaded.

(b) Reckless conduct is a misdemeanor.

SOURCE: e.g. Guam §§ 273, 346, 347, 361, 417; cf. §§ 394, 402, 588a; M.P.C. § 211.2; *Cal. § 1520 (T.D.2 1968); Cal. § 840 (1971); Mass. ch. 265, §§ 10 and 11; N.J. § 2C:12-2.

COMMENT: § 19.40 supersedes a number of Guam Penal Code provisions punishing conduct which, though fortuitously not resulting an injury, is reckless with the respect to the creation of danger to life. This type of reckless conduct is generalized into one provision as is done in the Model Penal Code and other Modern Codes.

§ 19.50. Terroristic Conduct; Defined & Punished.

(a) A person is guilty of terroristic conduct if he threatens to commit any crime of violence with intent to cause evacuation of a building, place of assembly; or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such inconvenience.

(b) Terroristic conduct is a felony of the third degree.

SOURCE: cf. Guam § 403a; *M.P.C. § 211.3; Cal. § 1530 (T.D.2 1968); Mass. ch. 265, § 9; N.J. § 2C:12-3.

CROSS-REFERENCES: §§ 61.15, 55.20 and 61.40 of this Title.

COMMENT: Essentially a new section. Compare former § 403a which is limited to false reports of a bomb. It is directed towards a threat to commit a crime of violence for the purpose of causing serious public inconvenience, which would include a threat to explode a bomb, and any other threats, even though no such bomb or device exists. However, it is not intended to cover conduct which comes within the category of disorderly conduct, false alarms or disrupting proceedings. Rather, it is directed at the defendant's own threat which is intended to cause the prohibited consequences. Similarly, it is not intended to include threat made to terrorize another. This type of conduct is covered by § 19.30(a)(3).

§ 19.60. Terrorizing; Defined & Punished.

(a) A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, and the natural and probable consequence of such a threat, is to

9 GCA CRIMES AND CORRECTIONS
CH. 19 ASSAULT, RECKLESS ENDANGERING, TERRORIZING

place the person to whom the threat is communicated or the person threatened in reasonable fear that crime will be committed.

(b) Terrorizing is a felony of the third degree.

SOURCE: Added by P.L. 16-34, eff. 09/02/81.

§ 19.69. Definitions.

Unless otherwise indicated, as used in § 19.70:

(a) *Harasses* or *harassment* means a knowing and willful course of conduct, whether physical, verbal, electronic, telephonic, written, or otherwise, directed at a specific person which alarms, annoys, or distresses the person, and which serves no legitimate purpose. Such course of conduct must be of a nature to cause a reasonable person to suffer substantial emotional distress, and must cause substantial emotional distress.

(b) *Course of conduct* means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Constitutionally and statutorily protected activity, including but not limited to picketing as a result of a labor dispute, is not included in this definition.

(c) *Credible threat* means any threat, physical or verbal, overtly or subtly manifested, constituting a threat with the intent and apparent ability to carry out the threat with the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. Such threatening advance must be against the life of, or a threat to cause bodily injury to, the person threatened or to a member of his or her immediate family.

SOURCE: Added by P.L. 22-35:2 (9/27/93).

NOTE: Section 1 of P.L. 22-35 stated the following Legislative Findings and gave to this and the following section the title, *The Guam Stalking Law*:

The Legislature finds Guam law to be woefully lacking in the adequate protection of persons who are threatened by the menacing presence of another person. It is assumed that scores of assaults and homicides could have been prevented in Guam over the last several years with adequate protective statutes in effect. The Legislature finds a need for a criminal statute to deter and punish the act of stalking, as defined in this Act.

§ 19.70. Stalking.

9 GCA CRIMES AND CORRECTIONS
CH. 19 ASSAULT, RECKLESS ENDANGERING, TERRORIZING

(a) A person is guilty of simple stalking if he or she willfully, maliciously, and repeatedly, follows or harasses another person or who makes a credible threat with intent to place that person or a member of his or her immediate family in fear of death or bodily injury.

(b) A person is guilty of advanced stalking if he or she violates subsection (a) of this section when there is a temporary restraining order or an injunction or both or any other court order in effect prohibiting the behavior described in that subsection against the same party.

(c) A person is guilty of advanced stalking if he or she violates subsection (a) of this section a second or subsequent time against the same victim, within seven (7) years of a prior conviction under that subsection, and involving an harassment or a credible threat of violence, as defined in this § 19.69 of this Chapter.

(d) Simply stalking is a felony of the third degree.

(e) Advanced stalking is a felony of the second degree.

(f) This section shall not apply to conduct which occurs during labor picketing.

SOURCE: Added by P.L. 22-35:3 (9/27/93).
