

**9 GCA CRIMES AND CORRECTIONS**  
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**CHAPTER 30**  
**FAMILY VIOLENCE**

**SOURCE:** This Chapter was enacted by P.L. 22-160:2 (12/30/94).

- § 30.10. Definitions.
- § 30.20. Family Violence.
- § 30.21. Conditions of Release.
- § 30.30. Powers and Duties of Peace Officers to Arrest for Crimes Involving Family Violence; Determination of Primary Aggressor; Required Report.
- § 30.31. Mandatory Confinement.
- § 30.32. Duties of Peace Officers to Victim of Family Violence; Required Notice to Victim.
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- § 30.90. Training course for Handling Family Violence Complaints.
- § 30.100. Maintenance of Systematic Records.
- § 30.200. Family Violence Registry: Central Database of Offenders Who Have Committed Offenses Involving Family Violence, to be Known and Cited as the "Family Violence Registry Act."

**§ 30.10. Definitions.**

As used in this Chapter:

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(a) *Family violence* means the occurrence of one (1) or more of the following acts by a family or household member, but does not include acts of self-defense or defense of others:

1. Attempting to cause or causing bodily injury to another family or household member;
2. Placing a family or household member in fear of bodily injury.

(b) *Family or household members* include:

1. Adults or minors who are current or former spouses;
2. Adults or minors who live together or who have lived together;
3. Adults or minors who are dating or who have dated;
4. Adults or minors who are engaged in or who have engaged in a sexual relationship;
5. Adults or minors who are related by blood or adoption to the fourth degree of affinity;
6. Adults or minors who are related or formerly related by marriage;
7. Persons who have a child in common; and
8. Minor children of a person in a relationship described in paragraphs (1) through (7) above.

(c) *Bodily injury* as used in this Chapter, has the same meaning as that provided in subsection (b) of § 16.10 of this title;

(d) *Attempt* as used in this Chapter, has the same meaning as that provided in § 13.10 of this title;

(e) *Peace officer* means any person so defined in 8 GCA § 5.55;

(f) *Victim* means any natural person against whom a crime, as defined under the laws of Guam, has been committed or attempted to be committed;

(g) *Witness* means any natural person, (i) having knowledge of the existence or nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for

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any purpose, or (iii) who has reported any crime to any peace officer, or (iv) who has been served with a subpoena issued under the authority of any court in Guam, or (iv) who would be believed by any reasonable person to be an individual described in subparagraphs (i) through (iv), above, inclusive;

(h) *Prosecuting attorney* as used in this Chapter means the Attorney General of Guam and those persons employed by the Attorney General's office specifically designated by the Attorney General.

**§ 30.20. Family Violence.**

(a) Any person who intentionally, knowingly, or recklessly commits an act of family violence, as defined in § 30.10 of this Chapter, is guilty of a misdemeanor, or of a third degree felony.

(b) Upon a written, noticed motion prior to commencement of trial, the defendant may move that a felony charge filed pursuant to this § 30.20 be reduced to a misdemeanor. Whether any charge shall proceed as a misdemeanor or a felony rests within the discretion of the court.

(c) In determining whether any felony charge filed pursuant to this § 30.20 should be reduced to a misdemeanor, the court shall consider the following factors, among others:

1. The extent or seriousness of the victim's injuries;
2. The defendant's history of violence against the same victim whether charged or uncharged;
3. The use of a gun or other weapon by the defendant;
4. The defendant's prior criminal history;
5. The victim's attitude and conduct regarding the incident;
6. The involvement of alcohol or other substance, and the defendant's history of substance abuse as reflected in the defendant's criminal history and other sources; and
7. The defendant's history of and amenability to counseling.

(d) If the court, after hearing, finds substantial evidence that a victim suffered serious bodily injury as defined in subsection (c) of § 16.10 of this title, no felony charged filed under this § 30.20 shall be reduced to a

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misdemeanor unless the court finds that due to unusual circumstances a reduction of the charge is manifestly in the interest of justice.

(e) The fact that an alleged criminal act involved family violence as defined in § 30.10 of this Chapter shall not preclude the prosecuting attorney from charging and prosecuting the defendant for any other violations of law, subject to the provisions set forth in § 1.22 of this title;

(f) In any case in which a person is convicted of violating this § 30.20 and probation is granted, the court shall require participation in an education and treatment program as a condition of probation unless, considering all the facts and the circumstances, the court finds participation in an education and treatment program inappropriate for the defendant.

(g) If probation is granted, or the imposition of a sentence is suspended, for any person convicted under subsection (a) of this § 30.20 who previously has been convicted under such subsection (a) for an offense that occurred within seven (7) years of the offense of the second conviction, it shall be a condition of such probation or suspended sentence that he or she be punished by imprisonment for not less than ten (10) days, and that he or she participate in, for no less than one (1) year, and successfully complete an education and treatment program, as designated by the court. However, the court, upon a showing of good cause, may find that the minimum imprisonment, or the participation in an education and treatment program, or both the minimum imprisonment and participation in an education and treatment program, as required by this subsection, shall not be imposed and may grant probation or the suspension of the imposition of a sentence.

(h) If probation is granted or the imposition of a sentence is suspended for any person convicted under subsection (a) of this § 30.20 who previously has been convicted of two (2) or more violations of such subsection (a) for offenses that occurred within seven (7) years of the most recent conviction, it shall be a condition of such probation or suspended sentence that he or she be punished by imprisonment for not less than thirty (30) days and that he or she participate in, for no less than one (1) year, and successfully complete an education and treatment program, as designated by the court. However, the court, upon a showing of good cause, may find that the minimum imprisonment, or the participation in an education and treatment program, or both the minimum imprisonment and participation in an education and treatment program, as required by this subsection, shall

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not be imposed and may grant probation or the suspension of the imposition of a sentence.

**§ 30.21. Conditions of Release.**

(a) Should a person, charged with a crime involving family violence or a violation of a court order, be released, the court may impose the following conditions of release:

(1) an order enjoining the person from threatening to commit or committing acts of family violence against the alleged victim or other family or household member;

(2) an order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly;

(3) an order directing the person to vacate the residence;

(4) an order directing the person to stay away from the alleged victim and any other family or household member, the residence, school, place of employment or any other specified place frequented by the alleged victim or any other family or household member;

(5) an order prohibiting the person from using or possessing a firearm or other weapon specified by the Court;

(6) an order prohibiting the person from possession or consumption of alcohol or controlled substances;

(7) an order granting the alleged victim possession and use of the automobile and other essential personal effects;

(8) any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in Court.

(b) If conditions of release are imposed, the Court shall:

(1) issue a written order for conditional release; and

(2) immediately distribute a copy of the order to the Guam Police Department and the Office of the Attorney General, Prosecution Division.

(c) The Court shall provide a copy of the conditions to the arrested or charged person and his/her counsel upon his or her release. Failure to provide the person with a copy of the conditions of release does not

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invalidate the conditions if the arrested or charged person has notice of the conditions.

(d) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the Court to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.

(e) When a person who is arrested for or charged with a crime involving family violence or a violation of a court order is released from custody, the Office of the Attorney General shall:

(1) use all reasonable means to immediately notify the victim of the alleged crime of the release; and

(2) furnish the victim of the alleged crime, at no cost, a certified copy of any conditions of release.

**SOURCE:** Added by P.L. 24-239:9 as part of *The Family Violence Act of 1998*.

**§ 30.30. Powers and Duties of Peace Officers to Arrest for Crimes Involving Family Violence; Determination of Primary Aggressor; Required Report.**

(a) If a peace officer has reasonable cause to believe that a person has committed a felony or misdemeanor involving family violence, the peace officer shall presume that arresting and charging the person is the appropriate response.

(b) If a peace officer receives complaints of family violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one (1) person was the primary aggressor, the officer need not arrest the other person believed to have committed family violence but the peace officer shall document to the best of his or her ability the evidence concerning the actions of each participant in the incident.

(c) In determining whether a person is the primary aggressor the officer shall consider:

1. Prior complaints of family violence;
2. The relative severity of the injuries inflicted on each person;
3. The likelihood of future injury to each person;

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4. Whether one of the persons acted in self-defense;
5. The use or threatened use of a weapon; and
6. The use or threatened use of physical force.

(d) A peace officer shall not:

1. Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by peace officers by any party; or,

2. Base the decision to arrest or not to arrest on:

(i) The specific consent or request of the victim; or,

(ii) The officer's perception of the willingness of a victim or witness to the family violence to testify or otherwise participate in a judicial proceeding.

(e) In addition to any other report required, a peace officer who does not make an arrest after investigating a complaint of family violence or who arrests two (2) or more persons for a crime involving family violence must submit a written report setting forth the grounds for not arresting or for arresting both parties.

**§ 30.31. Mandatory Confinement.**

When a peace officer makes an arrest for family violence the arrestee shall be confined until the magistrate's hearing, unless released earlier by the Office of the Attorney General.

**SOURCE:** Added by P.L. 24-239:6 as part of *The Family Violence Act of 1998*.

**§ 30.32. Duties of Peace Officers to Victim of Family Violence; Required Notice to Victim.**

(a) Peace officers shall respond to every request for assistance or protection, from or on behalf of a victim of alleged family violence, whether or not an order has been issued against the alleged abuser.

(b) A lower priority shall not be assigned to calls involving alleged incidents of abuse or violations of orders relative to family violence than is assigned in responding to like offenses involving strangers. Every law enforcement agency shall develop and implement a comprehensive inter- and intra-agency or departmental family violence policy and protocol to include:

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(1) the number of children in the family and/or household exposed to family violence; and

(2) referral to Child Protective Services for coordination and referral for assessment for appropriate counseling services.

(c) If the peace officer has reason to believe that a person is a victim of family violence, the officer shall use all reasonable means to prevent further family violence and to ensure the victim's safety including:

(1) taking the action necessary to provide for the safety of the victim and any family or household member;

(2) exercising arrest powers pursuant to this Chapter;

(3) confiscating any weapon involved in the alleged family violence incident and the firearms identification card of any person(s) arrested;

(4) promptly filling out and filing a family violence report;

(5) arranging for transportation for the victim to a safe place or shelter;

(6) arranging transportation for the victim to the nearest hospital or medical facility for treatment of injuries;

(7) accompanying the victim to a previous residence to remove essential personal belongings;

(8) supervising the Court-ordered removal of an abuser from a residence shared with a victim; and

(9) giving the victim immediate and adequate written notice of the rights of victims and of the remedies and services available to victims of family violence.

(d) As part of the notice to the victim, the required written notice shall be given as follows:

“You have the right to request a peace officer's assistance for your safety. You may also request that the peace officer assist you in obtaining your essential personal effects, and arranging transportation to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need

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of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. If you would like to speak with a victim's assistance representative, one will be contacted for you."

The above paragraph shall be read to all victims of family violence by the responding officer. Furthermore, the written notice shall advise the victim that victim advocates at the Office of the Attorney General are available to provide assistance to all victims, and can provide information about other support services in the community. The advocates' address and current telephone numbers shall be displayed prominently on the written notice.

In addition, a responding officer shall give written notice to every victim of family violence that full legal services are available at no cost from the Guam Legal Services Corporation and from the Public Defender Service Corporation. The addresses and current telephone numbers of both offices shall be displayed prominently on the written notice. Full legal services could include the following orders:

- (1) an order enjoining your abuser from threatening to commit or committing further acts of family violence;
- (2) an order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
- (3) an order removing your abuser from your residence;
- (4) an order directing your abuser to stay away from you and any other family or household members, your residence, school, place of employment or any other specified place frequented by you and another family or household member;
- (5) an order prohibiting your abuser from using or possessing any kind of weapon, instrument or thing to inflict bodily harm or injury;
- (6) an order granting you possession and use of the automobile and other essential personal effects;
- (7) an order granting custody of your child or children;
- (8) an order denying your abuser visitation;

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(9) an order specifying arrangements for visitation, including requiring supervised visitation; and

(10) an order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs and attorney's fees.

The written notice may be revised from time to time to include contact information for other providers of victim support services, so long as those services are provided at no cost to the victim.

(e) The written notice:

(1) must not include the addresses of shelters; and

(2) must be provided in a language the victim can understand.

**SOURCE:** Added by P.L. 24-239:7 as part of *The Family Violence Act of 1998*.

**§ 30.33. Limitations of Liability.**

Law enforcement agencies and peace officers shall not be liable for personal injury or property damage which occurs in the course of any good-faith effort to protect a victim of family violence, including, but not limited to, action taken during the course of an arrest, an attempt to separate two (2) parties or to enforce a Court order, or action taken during the transportation of the victim to a shelter, hospital or other safe place.

**SOURCE:** Added by P.L. 24-239:19 as part of the *Family Violence Act of 1998*.

**§ 30.40. Violation of a Court Order.**

(a) Any knowing violation of any of the following court orders shall be a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment:

1. An order enjoining a person from threatening to commit or committing acts of family violence against, or from harassing, annoying, or molesting, a family or household member, or any person named in the order;

2. An order removing or excluding a person from the family dwelling or from the dwelling of another, or from any habitable property as defined in subsection (b) of § 34.11 of this title;

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3. An order requiring a person to stay away from the residence, dwelling, school, day care center, place of employment, or any other specified place or from a specified person, within five hundred feet (500') of the specified place or specified person;

4. An order prohibiting a person from possessing a firearm or other weapon specified by the court; or

5. An order in a criminal case prohibiting the defendant from harassing, annoying, telephoning, contacting, or otherwise communicating with a victim or specified witness, either directly or indirectly.

(b) In the event of a conviction for a violation of subsection (a) of this § 30.40 which results in bodily injury as defined in subsection (b) of § 16.10 of this title, the defendant shall be imprisoned for at least forty-eight (48) hours.

(c) In the event of a conviction for a violation under subsection (b) of this § 30.40, occurring within one (1) year of a conviction of either subsections (a) or (b), committed against the same victim, the defendant shall be imprisoned for no less than thirty (30) days.

(d) When a peace officer has reasonable cause to believe that a person has violated one (1) of the orders of the court specified in subsection (a) of this § 30.40 and verifies the existence of the order, the peace officer shall presume that arresting and charging the person is the appropriate response.

(e) An admission by the defendant that he or she had knowledge of the court order shall be admissible in court notwithstanding the corpus delicti rule.

**§ 30.50. Authority of Peace Officer to Seize Weapons.**

For a crime involving family violence, a peace officer:

(a) Shall, incident to an arrest, seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime.

(b) May seize a weapon that is in the plain view of the officer or was discovered pursuant to consensual search, as necessary for the protection of the officer or other persons.

**§ 30.60. Disclosure of Family Violence Shelter.**

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(a) Any person who knowingly publishes, disseminates, or otherwise discloses the location of any family violence shelter or any place designated as a family violence shelter with the intent to harass, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration or operation of the shelter, is guilty of a misdemeanor.

(b) For purposes of this § 30.60, *family violence shelter* means a confidential location which provides emergency services on a 24-hour basis for victims of family violence, and their families.

**§ 30.70. Spousal Privileges Inapplicable in Criminal Proceedings Involving Family Violence.**

Notwithstanding any other provision of law, the following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving family violence:

- (a) the privilege not to testify against one's spouse;
- (b) the privilege for confidential marital communication; and
- (c) the physician-patient privilege.

**SOURCE:** Amended by P.L. 24-239:19 as part of the *Family Violence Act of 1998*.

**§ 30.80. Diversion Eligibility.**

Notwithstanding any other provision of law, and upon the determination of the judge, this § 30.80 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 title.

(a) The following persons are ineligible for the diversion 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 been diverted pursuant to this section within five (5) years prior to the commission of the charged offense whether or not the prior diversion resulted in expungement;

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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 of this Title, or criminal sexual conduct involving sexual penetration as defined in item (9) of subsection (d) of § 25.10, unless the court finds that due to unusual circumstances diversion 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 does not automatically entitle a defendant to the diversion process.

(c) The prosecuting attorney shall determine whether the defendant is ineligible for diversion by reason of any of the factors set forth in subsection (a) of this § 30.80. If the prosecutor finds that the person is not ineligible, and will agree to diversion, the prosecutor shall notify the defendant.

(d) If the prosecutor finds that the defendant is ineligible, or if the prosecutor will not agree to diversion although the defendant is not excluded by reason of subsection (a) of this § 30.80, the prosecutor shall notify the defendant.

(e) Any defendant who is not specifically ineligible for the diversion process pursuant to subsection (a) of this § 30.80 may apply to the court, by noticed motion for an order granting diversion. The prosecuting attorney may oppose this application.

**2011 NOTE:** P.L. 31-109:3 (Sept. 30, 2011) repeals and reenacts this section, effective (180) days from date of enactment, pursuant to P.L. 31-109:4.

P.L. 31-109:3, provides in part:

**“§ 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

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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. Diversion 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 § 30.80.1 and waives his or her right to a speedy trial, and if the defendant should be diverted from the criminal proceedings and referred for an education and treatment program directed specifically to the violent conduct of the defendant. The court, in determining the defendant's eligibility for diversion, 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 diversion process. If the court does not deem the defendant a person who would be benefited by diversion, or if the defendant does not consent to participate, the criminal proceedings shall continue as in any other case. If the court orders a defendant to be diverted, 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 treatment program.

(b) At such time that the defendant's case is diverted, 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 diverted pursuant to this section shall be no less than one (1) year, and no more than three (3) years if a misdemeanor is charged, and no more than five (5) years if a felony is charged.

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

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**2011 NOTE:** P.L. 31-109:3 (Sept. 30, 2011) repeals and reenacts this section, effective (180) days from date of enactment, pursuant to P.L. 31-109:4.

P.L. 31-109:3, provides in part:

**“§ 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,

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by noticed motion for an order granting a deferred plea. The prosecuting attorney may oppose this application.”

**§ 30.80.2. Reinstitution of Criminal Proceedings; Dismissal.**

If it appears to the prosecuting attorney, the court or the probation department that the divertee under § 30.80.1 of this Chapter is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from education and treatment programs, or that he or she has been convicted of any offense involving violence, after notice to the divertee, and upon motion by the prosecuting attorney or on the court's own motion, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds by substantial evidence that the divertee is not performing satisfactorily in the assigned program, or that the divertee is not benefiting from diversion, or the court finds that the divertee has been convicted of a crime as set out above, the criminal case shall be referred back to the court for resumption of the criminal proceedings. If the divertee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed upon motion or application of the defendant.

**2011 NOTE:** P.L. 31-109:3 (Sept. 30, 2011) repeals and reenacts this section, effective (180) days from date of enactment, pursuant to P.L. 31-109:4.

P.L. 31-109:3, provides in part:

**“§ 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.

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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. Use of Arrest Record Following Successful Completion of Diversion Program.**

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 diverted pursuant to § 30.80.1 of this Chapter. Upon successful completion of a diversion program the arrest upon which the diversion was based shall be expunged as provided by Chapter 11 of Title 8, Guam Code Annotated. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for such offense. A record pertaining to an arrest resulting in successful completion of the diversion process shall not, without the divertee's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate.

**2011 NOTE:** P.L. 31-109:3 (Sept. 30, 2011) repeals and reenacts this section, effective (180) days from date of enactment, pursuant to P.L. 31-109:4.

P.L. 31-109:3, provides in part:

**“§ 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

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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. Admissibility of Statement or Information Procured Therefrom Made During Determination of Defendant's Eligibility for Diversion.**

Any statement or any information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to any probation officer or counselor during the process of determining the defendant's eligibility for diversion or subsequent to the granting of diversion, shall be inadmissible.

**2011 NOTE:** P.L. 31-109:3 (Sept. 30, 2011) repeals and reenacts this section, effective (180) days from date of enactment pursuant to P.L. 31-109:4.

P.L. 31-109:3, provides in part:

**“§ 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 a counseling program or education program 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

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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 Presiding Judge of the Superior Court of Guam. The fee shall not exceed Ten Dollars (\$10.00) per session or per class.

(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.

**SOURCE:** Added by P.L. 24-59:IV:18.

**2011 NOTE:** P.L. 31-109:3 (Sept. 30, 2011) repeals and reenacts this section, effective (180) days from date of enactment pursuant to P.L. 31-109:4.

P.L. 31-109:3, provides in part:

**“§ 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.”

**§ 30.90. Establishment and Requirement of the Domestic Abuse Response Team (‘DART’).**

(a) The Chief of Police shall establish, as an integral division of the Guam Police Department, the Domestic Abuse Response Team (‘DART’) unit consisting of peace officers, social workers, victim advocates or other

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persons who completed the Family Violence Training Program, or specifically trained in counseling, crisis intervention or in the treatment of domestic or family violence victims. Such teams may be dispatched, along with a peace officer, to the scene of a reported incident of domestic or family violence.

(b) The Chief of Police shall establish and maintain a continuation education and training program consistent with the Family Violence Training Program for peace officers and those involved and participating in DART.

**SOURCE:** Repealed/reenacted by P.L. 24-242:2.

**§ 30.100. Maintenance of Systematic Records.**

(a) Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to family violence incidents, including orders which have not yet been served, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to family violence calls of the existence, terms, and effective dates of protection orders in effect.

(b) The terms and conditions of the protection under order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court.

(c) Upon request, law enforcement agencies shall serve the court orders specified in § 30.40 of this Chapter upon the party to be restrained at the scene of a family violence incident or at any time the party is in custody.

**§ 30.200. Family Violence Registry: Central Database of Offenders Who Have Committed Offenses Involving Family Violence, to be Known and Cited as the “Family Violence Registry Act.”**

(a) The Office of the Attorney General, with the mandatory cooperation of law enforcement agencies, *shall* maintain a computerized registry database containing information regarding persons who on two (2) *or more* occasions have been convicted of a family, domestic or dating violence, and/or stalking offense, provided, *however*, if the person is convicted of the offense with the special allegation of the use of a deadly weapon, *or* an additional charge of criminal sexual conduct against a minor, *or* an additional charge of any sex offenses against a family member, then only one (1) such offense *shall* be required for his or her listing on the registry database.

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(1) Persons listed in the database pursuant to this Subsection (a) *shall* be cross-referenced for any violation(s) of criminal sexual conduct, and/or aggravated assault conviction(s). Any such offense(s) *shall* be listed as additional information in the Family Violence Registry database.

(b) The information contained in the Family Violence Registry database is public information, with the *exception* of the following:

(1) information regarding the person's social security number, driver's license number, or telephone number; *or*

(2) information that would identify the victim of the offense with respect to which the conviction was made.

(c) The database maintained by the Office of the Attorney General under this Section must contain, to the extent the information is available:

(1) the person's full name, each alias used by the person, and the person's date of birth;

(2) the person's last known address;

(3) a physical description and recent photograph of the person;

(4) a list of offenses for which the person was convicted of two (2) *or more* cases of domestic, family or dating violence, and/or stalking; the date of conviction for each offense; and the punishment prescribed for each offense; and

(5) an indication as to whether the person was discharged, placed on probation or community supervision, or released on parole or to mandatory supervision following the conviction for each offense.

(d) The Office of the Attorney General *shall* permit a person whose name is included in the database established under this Section to petition the Department to remove the person's name from the Family Violence Registry database in response to the petition *if*:

(1) a court order of expungement is issued with respect to one (1) of two (2) family, domestic or dating violence, and/or stalking convictions, *unless* the person has two (2) *or more* additional convictions, *or* when the person was convicted of the family, domestic or dating violence, and/or stalking offense with the special allegation of the use of a deadly weapon; *or*

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(2) during the ten (10) year period preceding the date of the petition, the person has *not* since been convicted of an offense described in § 30.10, Chapter 30, Title 9, Guam Code Annotated. It is further provided, however:

(A) that the Office of the Attorney General *shall* conduct an investigation to see if any other convictions have occurred under circumstances for which there was a conviction of domestic, family or dating violence, and/or stalking, criminal sexual conduct, aggravated assault, and/or homicide, either on Guam or in any other jurisdiction of the United States. Any conviction for family, domestic or dating violence, and/or stalking, criminal sexual conduct, aggravated assault or homicide during the prior ten (10) year period *shall* be cause for the person *not* to be removed from the Family Violence Registry.

(e) The Office of the Attorney General may promulgate rules and regulations for petitioning for removal from the Family Violence Registry database. On the website through which a person may search the database described by this Section, the Office of the Attorney General *shall* also include information regarding:

(1) the manner in which a person may petition for removal of the person's name from the database.

(2) The Family Violence Registry database may include information concerning persons convicted of *at least* one (1) family, domestic or dating violence, and/or stalking offense committed prior to *or* after the effective date of this Act for which there is a conviction of family, domestic or dating violence, and/or stalking.

**SOURCE:** Added by P.L. 31-103:2 (Sept. 30, 2011).

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