

9 GCA CRIMES AND CORRECTIONS
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CHAPTER 31
OFFENSES AGAINST THE FAMILY

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COMMENT: Chapter 31 encompasses a wide variety of crime from bigamy and incest through an attempt to control abortions, (see Comment to § 31.20), to child abuse. The majority of this Section is a restatement of former Guam law with improvement and a modernization of language.

§ 31.10. Bigamy; Defined & Punished.

(a) A married person is guilty of *bigamy*, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

- (1) the defendant believes that the prior spouse is dead;
- (2) the defendant and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the defendant to be alive;
- (3) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the defendant does not know that judgment to be invalid; or

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(4) the defendant reasonably believes that he is legally eligible to remarry.

(b) A person is guilty of bigamy if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy.

SOURCE: G.P.C. §§ 281-284; *M.P.C. § 230.1.

COMMENT: The crime of bigamy is reduced by this Section from a felony to a misdemeanor, thus increasing the likelihood of prosecution as Attorneys General on Guam have felt that felony charges were too severe under the facts usually presented.

It should be noted that the other spouse is also guilty of bigamy if she/he contracts, or reports the contract of marriage, knowing that his or her spouse will be guilty of bigamy because of the spouse's relationship with another person.

§ 31.15. Incest: Defined & Punished.

A person is guilty of *incest*, a misdemeanor, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. Cohabit means to live together under the representation or appearance of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

SOURCE: G.P.C. § 285; Civil Code § 59; *M.P.C. § 230.2.

COMMENT: Again, § 31.15 continues the substance of Penal Code § 235. In addition, § 31.15 clarifies two (2) issues not covered by prior law, namely legitimacy is irrelevant where the concern is with the bloodline, and adoptive relationships are included as equivalent of natural parents to their children and vice versa.

The staff of the Law Revision Commission suggested that it would be appropriate to classify the crime of incest as a misdemeanor and the Commission concurred.

§ 31.20. Abortion.

(a) *Abortion* means the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(b) An *abortion* may be performed:

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(1) by a physician licensed to practice medicine this Territory or by a physician practicing medicine in the employ of the government of the United States;

(2) in the physician's adequately equipped medical clinic or in a hospital approved or operated by the United States or this Territory; and

(3) (A) within 13 weeks after the commencement of the pregnancy; or

(B) within 26 weeks after the commencement of the pregnancy if the physician has reasonably determined using all available means:

(i) that the child would be born with a grave physical or mental defect; or

(ii) that the pregnancy resulted from rape or incest; or

(C) at any time after the commencement of pregnancy if the physician reasonably determines using all available means that there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother.

SOURCE: Enacted in 1978 as part of the original Criminal & Correctional Code.

COMMENT: The Law Revision Commission made no recommendation as to the regulation of abortion. This section was added by the Legislature, which committed a serious error in its adoption (since rectified). Initially (1978), no sanctions were provided for the performing of illegal abortions. However, this has been changed in later sections of this Chapter.

COURT DECISIONS: Sections 31.20, 31.21, 31.22 and 31.33, as reenacted by P.L. 20-134, were declared null and void as contrary to the U.S. Constitution. As a result, the original sections of law were reinstated. *Guam Society of Obstetricians & Gynecologists, et al. v. Ada, Governor of Guam, et al.*, No. 90-16706, C.A.9 (1992), 962 F.2d 1366.

NOTE: Because of the foregoing decision, the Compiler will report as the law the statutes as they existed prior to P.L. 20-134. However, the statutes which were invalidated by the Ninth Circuit are as follows:

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§ 31.20. Abortion: Defined. *Abortion* means the purposeful termination of a human pregnancy after implantation of a fertilized ovum by any person including the pregnant woman herself with an intention other than to produce a live birth or to remove a dead unborn fetus. Abortion does not mean the medical intervention in (i) an ectopic pregnancy, or (ii) in a pregnancy at any time after the commencement of pregnancy if two (2) physicians who practice independently of each other reasonably determine using all available means that there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the health of the mother, any such termination of pregnancy to be subsequently reviewed by a peer review committee designated by the Guam Medical Licensure Board, and in either case such an operation is performed by a physician licensed to practice medicine in Guam or by a physician practicing medicine in the employ of the government of the United States, in an adequately equipped medical clinic or in a hospital approved or operated by the government of the United States or of Guam.

§ 31.21. Providing or Administering Drug or Employing Means to Cause an Abortion. Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to cause an abortion of such woman as defined in § 31.20 of this Title is guilty of a third degree felony. In addition, if such person is a licensed physician, the Guam Medical Licensure Board shall take appropriate disciplinary action.

§ 31.22. Soliciting and Taking Drug or Submitting to an Attempt to Cause an Abortion. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever with intent thereby to cause an abortion as defined in § 31.20 of this Title is guilty of a misdemeanor.

§ 31.23. Soliciting to Submit to Operation, Etc., to Cause an Abortion. Every person who solicits any woman to submit to any operation, or to the use of any means whatever, to cause an abortion as defined in § 31.20 of this Title is guilty of a misdemeanor.

§ 31.21 Illegal Abortions Punished.

Any person performing an abortion in circumstances other than permitted by § 31.20 shall be guilty of a third degree felony.

SOURCE: Added by P.L. 14-122 (4/19/78).

COMMENT: This Section was added after it was discovered that the Legislature, while regulating abortions, had neglected to provide any penalty for performing abortions in situations other than those permitted by law.

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§ 31.22 Refusal to Participate in Abortion.

(a) (1) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any person employed or with staff privileges at a hospital, facility or clinic to directly participate in the induction or performance of an abortion, if such employee or other person has filed a written statement with the employer or the hospital, facility or clinic indicating a moral, ethical or religious basis for refusal to participate in the abortion.

(2) No such employee or other person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his refusal to participate in an abortion. No such employee of a hospital, facility or clinic which does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of such person's participation in the performance of an abortion in other than such hospital, facility or clinic.

(3) No employer shall refuse to employ any person because of such person's refusal for moral, ethical or religious reasons to participate in an abortion, unless such person would be assigned in the normal course of business of any hospital, facility or clinic to work in those parts of the hospital, facility or clinic where abortion patients are cared for. No provision of this Chapter prohibits any hospital, facility or clinic which permits the performance of abortions from inquiring whether the employee or prospective employee would advance a moral, ethical or religious basis for refusal to participate in an abortion before hiring or assigning such a person to that part of a hospital, facility or clinic where abortion patients are cared for.

(4) The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subsection shall not form the basis of any claim for damages.

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(b) No hospital, facility, or clinic shall refuse staff privileges to a physician because of such physician's refusal to participate in the performance of an abortion for moral, ethical, or religious reasons.

(c) (1) Nothing in this Chapter shall require a non-profit hospital or other facility or clinic which is operated by a religious corporation or other religious organization or any administrative officer, employee, agent, or member of the governing board thereof, to perform or permit the performance of an abortion in such facility or clinic or to provide abortion services. No such non-profit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act.

(2) The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic which does not permit the performance of abortions on its premises shall post notice of such proscription in an area of such facility or clinic which is open to patients and prospective admittees.

(d) (1) This section shall not apply to medical emergency situations and spontaneous abortions.

(2) Any violation of this section is a misdemeanor.

SOURCE: Added by P.L. 14-122 (4/19/78).

2018 NOTE: Subsection/subitem designations altered/added in subsections (a) and (c) pursuant to authority by 1 GCA § 1606.

§ 31.30. Child Abuse; Defined & Punished.

(a) A person is guilty of *child abuse* when:

(1) he subjects a child to cruel mistreatment; or

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(2) having a child in his care or custody or under his control, he:

(A) deserts that child with intent to abandon him;

(B) subjects that child to cruel mistreatment; or

(C) unreasonably causes or permits the physical or, emotional health of that child to be endangered.

(b) Child abuse is a felony of the third degree when it is committed under circumstances likely to result in death or serious bodily injury. Otherwise, it is a misdemeanor.

(c) Voluntary surrender of physical custody of a newborn infant by a mother to authorized Safe Haven personnel pursuant to the provisions of the Newborn Infant Safe Haven Act, 19 GCA, Chapter 13, Article 5, is an absolute defense to prosecution for child abuse as a result of deserting that child with intent to abandon that child under Subsection (a)(2)(A) of this Section.

(1) For purposes of this Subsection, “authorized Safe Haven personnel” has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(a).

(2) For purposes of this Subsection, “mother” has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(d).

(3) For purposes of this Subsection, “newborn infant” has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(e).

SOURCE: M.P.C. § 230.4; *Cal. § 980 (1971); Mass. ch. 273, §§ 1, 4; N.J. § 2C:24-4. Subsection (c) added by P.L. 34-120:2 (Sept. 8, 2018).

CROSS-REFERENCES: G.P.C. §§ 270, 271, 271a, 273, 273c; See also § 272.

COMMENT: § 31.30 supersedes all or parts of the Guam Penal Code dealing with the same subject. The extent of liability under this Section depends upon the relationship of the defendant to the child and the degree to risk to the child. Any person who subjects a child to cruel mistreatment is guilty of a crime. Persons having the care or responsibility for a child are held to a high standard of care. In addition to the obvious crimes of desertion or cruel mistreatment, parents or guardians may not unreasonably cause or permit a child to be endangered.

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This § 31.30(2)(C) recognizes the duty imposed upon parents or guardians to care for a child's emotional, as well as physical needs.

§ 31.35. Reporting of Suspected Child Abuse to Department of Public Health and Social Services.

[Repealed.]

SOURCE: G.P.C. § 273b; Cal. § 982 (1971). Repealed by P.L. 14-137, effective 07/25/78.

§ 31.37. Registry of Cases of Suspected Child Abuse Reported to Department of Public Health and Social Services.

[Repealed.]

SOURCE: G.P.C. § 273e. Repealed by P.L. 14-137, effective 07/25/78.

§ 31.40. Abuse of An Incompetent; Defined & Punished.

(a) A person is guilty of *abuse of an incompetent* when:

(1) he subjects an incompetent to cruel mistreatment;
or

(2) having an incompetent in his care of custody or under his control, he:

(A) deserts that incompetent with intent to abandon him;

(B) subjects that incompetent to cruel mistreatment; or

(C) unreasonably causes or permits the physical or emotional health of that incompetent to be endangered.

(b) As used in this Section, *incompetent* means a person who is unable to care for himself because of old age, or because of physical or mental illness, disease or defect.

(c) *Abuse of an incompetent* is a felony of the third degree when it is committed under circumstances likely to result in death or serious bodily injury. Otherwise, it is a misdemeanor.

SOURCE: G.P.C. § 361; Compare M.P.C. § 230.5; *Cal. § 984 (1971); N.J. § 2C:24-5.

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COMMENT: § 31.40 supersedes former Penal Code § 361 and extends the same protection to incompetents that § 31.40 provides for children.

§ 31.45. Failure to Provide; Defined & Punished.

(a) A person is guilty of *failure to provide* when having a spouse, child or indigent parent whom he is legally obliged to support, he knowingly fails to furnish that person with necessary support.

(b) As used in this Section, support includes food, clothing, shelter, medical attention and education.

(c) As used in this Section, child includes a child conceived but not yet born.

SOURCE: G.P.C. §§ 270, 270a, 270c, 271a; M.P.C. § 230.5; Cal. § 986 (1971); Mass. ch. 273, §§ 1, 3 and 4; N.J. § 2C:24-5.

CROSS-REFERENCES: §§ 1500-1531, Code of Civil Procedure (Uniform Reciprocal Enforcement of Support Act).

COMMENT: This is a replacement of all or part of the Penal Code sections on the same subject. This Section does not apply to an ex-spouse. While this Section has been used sparingly, it is beneficial when one is faced with a certain type of continual, unlawful and deliberate failure to support where the means of support are available. This statute is usually used as a last resort after civil remedies have failed.

§ 31.50. Surety for Support.

(a) If at any time before sentencing under any prosecution pursuant to § 31.45, the defendant appears before the court and enters into any undertaking with sufficient sureties in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will pay to the person having custody of such spouse, child or parent, such sum per month as may be fixed by the court to provide necessary food, clothing, shelter or medical attendance or other remedial care, then the court may suspend proceedings or sentence therein.

(b) The undertaking provided pursuant to Subsection (a) shall be valid and binding for one (1) year, or such lesser time as the court shall fix.

(c) Upon the failure of the defendant to comply with the undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had in the

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action or why sentence should not be imposed, whereupon the court may proceed with the action, or pass sentence or for good cause shown may modify the order and take a new undertaking and further suspend proceedings or sentence for a like period.

SOURCE: GPC 270(b).

COMMENT: § 31.50 continues Penal Code 270(b) and expands its scope to include any of the relationship dealt with in § 31.45.

§ 31.55. Fine Imposed May be Used for Support.

In any case where there is a conviction of an offense under § 31.45 and a sentence to pay a fine, such fine may be directed by the court to be paid in whole or in part to the spouse, child or parent or guardian or custodian of such person.

SOURCE: G.P.C. § 270(d).

COMMENT: § 31.55 continues the substance of former Penal Code § 270(d), but like § 31.50, is broadened to include payments to spouse, child or parent.

§ 31.60. Criminal Spouse Abuse: Penalty.

[Repealed.]

SOURCE: Added by P.L. 15-60:3, eff. 08/31/79. Repealed by P.L. 22-160:3 (12/30/94).

COMMENT: The Title of P.L. 22-160 indicated that § 31.60 is repealed. This is logical since new Chapter 30 covers the field previously covered in § 31.60. In an apparent typographical error, Section 3 of P.L. 22-160, which actually repealed the law, repealed § 30.61. Such section does not exist since Chapter 30, of which it ought to be a part, was enacted by the same law which repealed this Section. Therefore, the Compiler will treat this section as the proper one repealed.

§ 31.65. Curfew Hours for Minors.

(a) Definitions. As used in this Section:

(1) *Curfew Hours* means:

(A) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, *or* Thursday until 6:00 a.m. of the following day; and

(B) 12:01 a.m. until 6:00 a.m. on any Saturday *or* Sunday.

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(2) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, *but is not limited to*, a fire, a natural disaster, an automobile accident, *or* any situation requiring immediate action to prevent serious bodily injury *or* loss of life.

(3) *Establishment* means any privately-owned place of business operated for a profit to which the public is invited, including, *but not limited to*, any place of amusement *or* entertainment.

(4) *Guardian* means:

(A) a person who, under court order, is the guardian of the person of a minor; *or*

(B) a public *or* private agency with whom a minor has been placed by a court.

(5) *Minor* means any person under seventeen (17) years of age.

(6) *Operator* means any individual, firm, association, partnership, *or* corporation operating, managing, *or* conducting any establishment. The term includes the members *or* partners of an association *or* partnership and the officers of a corporation.

(7) *Parent* means a person who is:

(A) a natural parent, adoptive parent, *or* step-parent of another person; *or*

(B) at least eighteen (18) years of age and authorized by a parent *or* guardian to have the care and custody of a minor.

(8) *Public Place* means any place to which the public *or* a substantial group of the public has access and includes, *but is not limited to*, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(9) *Remain* means to:

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(A) linger *or* stay; *or*

(B) fail to leave premises when requested to do so by a peace officer *or* the owner, operator, *or* other person in control of the premises.

(10) *Serious Bodily Injury* means bodily injury that creates a substantial risk of death *or* that causes death, serious permanent disfigurement, *or* protracted loss *or* impairment of the function of any bodily member *or* organ.

(b) Offenses.

(1) A minor commits an offense *if* he remains in any public place *or* on the premises of any establishment on Guam during curfew hours.

(2) A parent *or* guardian of a minor commits an offense *if* he knowingly permits, *or* by insufficient control allows, the minor to remain in any public place *or* on the premises of any establishment on Guam during curfew hours.

(3) The owner, operator, *or* any employee of an establishment commits an offense *if* he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(c) Defenses.

(1) It is a defense to prosecution under Subsection (b) that the minor was:

(A) accompanied by the minor's parent *or* guardian;

(B) on an errand at the direction of the minor's parent *or* guardian, without any detour *or* stop;

(C) engaged in an employment activity, *or* going to *or* returning home from an employment activity, without any detour *or* stop;

(D) involved in an emergency;

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(E) on the sidewalk abutting the minor's residence *or* abutting the residence of a next-door neighbor *if* the neighbor did not complain to the police department about the minor's presence;

(F) attending *or* traveling to or returning home without detour from an official school, religious, *or* other recreational activity supervised by adults and sponsored by the government of Guam, a civic organization, *or* another similar entity that takes responsibility for the minor, *or* going to *or* returning home from, without any detour *or* stop, an official school, religious, *or* other recreational activity supervised by adults and sponsored by the government of Guam, a civic organization, *or* another similar entity that takes responsibility for the minor;

(G) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; *or*

(H) married *or* had been married, enlisted in a branch of the United States Armed Forces *or* the National Guard *or* had disabilities of minority removed in accordance with Article 3 of Chapter 4 of Title 19 GCA.

(2) It is a defense to prosecution under Subsection (b)(3) that the owner, operator, *or* employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(d) Enforcement. Before taking any enforcement action under this Section, a police officer *shall* ask the apparent offender's age and reason for being in the public place. The officer *shall* not issue a citation, take into custody *or* make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (c) is present.

(e) Penalties.

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(1) A person who violates a provision of this Chapter is guilty of a separate offense for each day *or* part of a day during which the violation is committed, continued, *or* permitted. Each offense, upon conviction, is punishable by a fine *not to exceed* Five Hundred Dollars (\$500).

(2) When required by §5104 of Title 19 GCA, as amended, the Superior Court *shall* waive original jurisdiction over a minor who violates Subsection (b)(1) of this Section and *shall* refer the minor to juvenile court.

SOURCE: Added by P.L. 17-069:2 (Sept. 12, 1984). Repealed and reenacted by P.L. 22-100:2 (Mar. 31, 1994); P.L. 29-028:1 (Oct. 24, 2007).

2018 NOTE: Past publications of the GCA included the following annotation:

COURT DECISIONS: This curfew law has been declared unconstitutional on its face because it is vague and overbroad. In the Interest of K.D.Q., JD0300-98, Superior Court of Guam (Juvenile Div. 1998). This case has not been repealed nor has the section been amended to conform to the decision.

This annotation is no longer accurate. The version of the curfew law found to be unconstitutional was repealed in 2007 by P.L. 29-028.

§ 31.70. Leaving Children Unattended or Unsupervised in Motor Vehicles; Penalty; Authority of Law Enforcement Officer.

(a) A parent, legal guardian, or other person, at least twelve (12) years of age, responsible for a child five (5) years of age or younger, may not leave such child unattended or unsupervised in a motor vehicle:

(1) For a period in excess of fifteen (15) minutes; or

(2) For any period of time if the motor of the vehicle is running or the health of the child is in danger.

(b) Any person who violates the provisions of Subsection (a)(1) commits a petty misdemeanor.

(c) Any person who violates the provisions of Subsection (a)(2) is guilty of a violation, punishable by a fine not less than

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Fifty Dollars (\$50) and not more than Five Hundred Dollars (\$500).

(d) Any person who violates Subsection (a) and in so doing causes serious bodily injury, permanent disability, or permanent disfigurement to a child commits a felony of the third degree.

(e) Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of Subsection (a) may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.

(1) If the child is removed from the immediate area, notification should be placed on the vehicle.

(2) The child shall be remanded to the custody of the Child Protective Services Division pursuant to Title 19 GCA, Chapter 13, unless the law enforcement officer is able to locate the parents or legal guardian or other person responsible for the child.

SOURCE: Added as § 70.45 by P.L. 29-044:1 (Jan. 2, 2008) and renumbered to § 70.44.2. Renumbered to § 31.70 as part of the reorganization of Chapter 70, pursuant to the authority granted by 1 GCA § 1606.
