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CH. 34 ARSON, NEGLIGENT BURNING, CRIMINAL MISCHIEF

CHAPTER 34
ARSON, NEGLIGENT BURNING, CRIMINAL MISCHIEF

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COMMENT: (1978) This Chapter 34 replaces many narrowly defined crimes against property, which may or may not endanger human life or safety, and are found in the Penal Code, down to four (4) generally-defined crimes. Thus, we have aggravated arson, negligent burning and criminal mischief. The definitions are greatly expanded from those provided by the Penal Code. Thus, § 34.10(b) expands the concept of “burning” in the Penal Code to any “habitable property” which could include vehicle, vessels, schools, churches, hotels or any building in which people may occupy.

The classification of the standard of arson no longer reflects the value of property involved, but rather reflects the degree of risk involved to persons who may be the victims of the burnings. Actual harm to such persons will constitute a separate, crime, e.g., §§ 19.20 and 19.30 of this Code. The crime of “arson” does involve only the destruction of property or defrauding of an insure, without regard to any value attached to the property.

Due to the extreme risk which fire and explosion cause to both persons and property, the Commission felt that the crime of “negligent burning” shall be included in this Code. This is an exception to the concept that negligence will not create criminal liability, but the danger involved in the prohibited activity was deemed so great as to warrant an exception in this case.

Criminal mischief, § 34.50, creates a crime involving a wide variety of property-damaging conduct not characterized by the dangerous means (fire explosion) dealt with in the previous sections. § 34.50(b) is designed to deal with a variety of situations, for example, throwing a power switch, in which the gist of the harm is not damage to the property immediately effected but rather the threat of extended consequences. Criminal mischief penalties are classified according to the harm actually caused or intended to be caused by the defendant's conduct, except for the

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highly restricted "tampering" offense defined by Subsection (b) which is treated as a third degree felony because of the extremely serious risk with which it deals and the demonstrated dangerousness of a defendant who maliciously creates that risk.

§ 34.10. Definitions.

As used in this Chapter:

(a) *Property* means any form of real property or tangible personal property which is capable of being damaged or destroyed.

(b) *Habitable Property* means any structure, vehicle or vessel adapted for the accommodation or occupation of persons.

(c) *Property* is that of another if anyone other than the defendant has a possessory or proprietary interest in any portion thereof.

(d) *Forest land* means any brush covered land, cut-over land, forest, grasslands, jungle, or woods.

SOURCE: M.P.C. § 220.1(4); *Cal. § 2800 (T.D.1 1967); Cal. § 1070 (1971); Mass. ch. 266, § 1; N.J. § 2C:17-1(b). Subsection (d) added by P.L. 35-134:2 (Dec. 29, 2020).

CROSS-REFERENCES: § 34.20.

§ 34.20. Aggravated Arson; Defined & Punished.

(a) A person is guilty of aggravated arson if he recklessly damages any habitable property by means of fire or explosives in conscious disregard of a substantial risk that at the time of such conduct a person may be in such habitable property, whether or not a person is actually present.

(b) Aggravated arson is a second degree felony. In the case of aggravated arson as a felony of the second degree, the court shall impose a sentence of imprisonment of a minimum term of five (5) years and may impose a maximum term of up to ten (10) years; the minimum term imposed shall not be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term

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of not less than three (3) years in addition to such term of imprisonment.

SOURCE: G.P.C. §§ 447a, 448a, 449a, 601; M.P.C. § 220.1; *Cal. § 2801 (T.D.1 1967); Mass. ch. 266, § 3; N.J. § 2C:17-1. Enacted 1977; Subsection (b) amended by P.L. 14-143, eff. 10/01/78.

CROSS-REFERENCES: 9 GCA §§ 19.20 and 19.30.

§ 34.30. Arson; Defined & Punished.

(a) A person is guilty of *arson* if under circumstances not amounting to aggravated arson he starts a fire or causes an explosion, whether on his own property, another's property, or forest land:

(1) with the intention of defrauding an insurer; or

(2) in reckless disregard of a risk that his conduct will damage or destroy the property of another; or

(3) in reckless disregard of a risk that his conduct will damage or destroy forest land.

(b) Arson is a third degree felony.

SOURCE: G.P.C. §§ 447a, 448a, 449a, 450a, 548; See also §§ 600, 601; M.P.C. § 220.1; *Cal. 2802 (T.D.1 1967); Cal. §§ 1076, 1078 (1971); Mass. ch. 266, § 4; N.J. § 2C:17-1. Amended by P.L. 35-134:3 (Dec. 29, 2020).

CROSS-REFERENCES: 9 GCA §§ 13.10, 13.20, 13.60. Penal Code § 451a abolished.

§ 34.40. Negligent Burning; Defined & Punished.

(a) A person is guilty of *negligent burning* if he:

(1) negligently starts a fire or causes an explosion whether on his own property, another's property, or forest land, and thereby negligently endangers human life, or negligently places the property of another, or forest land, in danger of damage or destruction; or

(2) having started a fire, whether negligently or not, and knowing that its spread will endanger the life or property of another, or forest land, either fails to take reasonable measures to put out or control the fire, or fails to give a prompt fire alarm.

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(b) Negligent burning is a misdemeanor. If a person guilty of negligent burning is offered Alternative Service Restitution in accordance with Article 6 of Chapter 80, 9 GCA, the restoration of forest lands is an allowable form of restitution or alternative community service.

SOURCE: See G.P.C. § 384; M.P.C. § 220.3; *Cal. § 2803 (T.D.1 1967); Mass. ch. 266, § 1; N.J. § 2C:17-1(a). Amended by P.L. 35-134:4 (Dec. 29, 2020).

CROSS-REFERENCES: 9 GCA § 4.30.

§ 34.50. Criminal Mischief; Defined.

A person commits *criminal mischief* if:

(a) under circumstances not amounting to arson he damages or destroys property with the intention of defrauding an insurer; or

(b) he intentionally tampers with the property of another or forest land and thereby:

(1) recklessly endangers human life; or

(2) recklessly causes or threatens a substantial interruption or impairment of any public utility service;
or

(c) he intentionally damages the property of another or forest land; or

(d) he intentionally damages the motor vehicle of another.

SOURCE: G.P.C. §§ 499, 499a, 539, 548, 588-593e, 594-597, 600, 602, 604-615, 617, 622-623, 624; See also § 384; M.P.C. § 2203; *Cal. § 2804 (T.D.1 1967); Cal. §§ 1082, 1084 (1971); Mass. ch. 266, §§ 6-8; N.J. § 2C:17-3; amended by P.L. 20-98:1. Subsection (c) amended by P.L. 22-149:1 (12/29/94); P.L. 23-27:2 (6/27/95). Amended by P.L. 35-134:5 (Dec. 29, 2020).

§ 34.60. Criminal Mischief; Punished.

(a) A violation of subsections (b) or (d) of § 34.50 is a third degree felony.

(b) A violation of subsection (a) of § 34.50 is a third degree felony if the defendant's conduct causes or is intended to cause

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pecuniary loss in excess of Five Hundred Dollars (\$500.00), a misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss in excess of Fifty Dollars (\$50.00), and a petty misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss in excess of Twenty-four Dollars (\$24.00). Otherwise, criminal mischief is a violation.

(c) Any adult convicted under subsection (c) of § 34.50, Title 9, Guam Code Annotated, is guilty of a misdemeanor punishable by imprisonment for not less than a mandatory forty-eight (48) hours nor more than one year and a fine of two hundred fifty dollars (\$250.00) for the first offense, five hundred dollars (\$500.00) for the second offense and one thousand dollars (\$1000.00) for each subsequent offense.

In the case of a minor, the parents or the legal guardian shall be jointly and severally liable with the minor for the payment of all fines. Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents' or legal guardian's property to include the fine and court costs. Upon an application and finding of indigence, the court may decline to order fines against the minor or parents.

In addition to any punishment listed in subsection (c), the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the defendant's offense in the amount or manner determined by the court. Furthermore, the person or if a minor, his or her parents, shall repaint or refurbish the property so damaged, destroyed, removed, or defaced at such person's expense, under the supervision of the affected property owner or a court representative. The person shall also perform a minimum of one hundred eighty (180) hours but not to exceed three hundred sixty (360) hours of community service. Parents or legal guardians of any minor found to have violated this subsection shall also be responsible for providing supervision as well as paying for the fine if the minor is unable to do so.

(d) The court may order that any person punished under § 34.60(c) or § 34.70, Title 9, Guam Code Annotated, who is to be punished by imprisonment, shall be confined on days other than days of regular employment of the person, or on days other than

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school days if the defendant is a minor, as determined by the court.

SOURCE: See § 34.50; amended by P.L. 20-98:2. Subsection (c) added by P.L. 22-149:2 (12/29/94). Subsection (b) amended by P.L. 23-27:1 (6/27/95). Subsection (c) amended by P.L. 23-27:4. Subsection (d) added by P.L. 23-27:5.

§ 34.70. Graffiti Prohibited.

(a) Definitions. For the purpose of this section, the following terms apply:

(1) *Broad-tipped indelible marker* means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half inch or greater.

(2) *Bona fide evidence of majority* means a document issued by a federal, state, county or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

(3) *Owner* means any and all persons with legal and/or equitable title to real property in Guam as their names and addresses are shown upon the records of the Department of Revenue of Taxation.

(4) *Supervising Adult* means an individual eighteen (18) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.

(5) *Used or intended to be used* includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.

(b) No person shall write, paint or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property owned, operated or maintained by a governmental entity or any agency or

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instrumentality thereof or by any person, firm or corporation unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained.

(c) Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad-tipped indelible marker with the intent to violate the provisions of this section.

(d) Possession of spray paint or broad-tipped indelible markers by minors on public property is prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container or spray paint can or broad-tipped indelible marker while on public property, highway, street, alley, or way except in the company of a supervising adult.

(e) Possession of spray paint or broad-tipped indelible markers by minors on private property is prohibited without consent of the owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession of the aerosol container or marker while on his or her property.

(f) Any person violating subsections (b), (c), (d) or (e) shall be punished by a fine of one thousand dollars (\$1,000.00) for the first offense, and two thousand five hundred dollars (\$2,500.00) for the second offense; and for each subsequent offense by a fine of five thousand dollars (\$5,000.00) or by imprisonment for a term *not to exceed* one hundred twenty (120) days or by both fine and imprisonment at the discretion of the court. In the case of a minor, the parents or legal guardian *shall* be responsible for payment of all fines. Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents or legal guardian's property to include the fine and court costs.

(g) In addition to any punishment ordered under subsection (f), the court shall order any person found in violation of subsections (b), (c), (d) or (e) to make restitution to the victim

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for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court. Where the defendant is a minor, the parents or legal guardian shall be jointly and severally liable with the minor to make such restitution.

(h) In addition to any punishment listed in subsections (f) and restitution ordered under subsection (g), the court shall order any person found in violation of subsection (b), (c), (d) or (e) to perform monitored community service in the removal of graffiti of *not less than* two hundred fifty (250) hours and *not more than* five hundred (500) hours.

(i) In addition to any punishment listed in subsections (f), (g) and (h), any adult convicted for violating subsections (b), (c), (d) or (e) is guilty of a misdemeanor punishable by imprisonment for not less than a mandatory sixty (60) days.

(j) All personal property, including, but not limited to, automobiles and bicycles, used or intended to be used in violating subsections (b), (c), (d) or (e) shall be forfeitable to Guam. In any forfeiture under this section, the Court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by the laws of Guam, the Organic Act, and the U.S. Constitution.

(k) No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen years (18) shall buy any aerosol container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.

(l) Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers *shall*:

(1) Place a sign in clear public view at or near the display of such products stating:

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“GRAFFITI IS A CRIME. ANY PERSON DEFACING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO ONE HUNDRED TWENTY (120) DAYS AND/OR A FINE UP TO FIVE THOUSAND DOLLARS (\$5,000.00).”

(2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers which states:

“IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF TWO HUNDRED FIFTY DOLLARS (\$250.00).”

(m) Violation of subsection (l) shall result in a civil penalty of two hundred fifty dollars (\$250.00) for a first offense and five hundred dollars (\$500.00) for subsequent offenses. When three (3) violations of subsection (l) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two (2) years. Violation of such injunction shall be punished by a fine of two hundred fifty hundred dollars (\$250.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers until payment of the fine, attorney’s fees and costs.

(n) In addition to any punishment ordered under Subsection (f), (g), (h), (i) and (j), the court *shall* immediately, upon conviction of an offender charged with the defacement of property, revoke the license or instruction permit of any driver in violation of this Section subject to a period of time described

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hereafter:

(1) after one (1) conviction, six (6) months;

(2) after a second or subsequent conviction, one (1) year for each conviction.

Any person who was convicted of any offense as described in this Act upon being eligible to receive a license or instruction permit, *shall not* be eligible to receive a license or instruction permit until the entire penalty period has elapsed.

Any prior convictions resulting in the revocation of a driver's license or instruction permit *shall not* run concurrently with any existing or subsequent suspension, revocation, cancellation or denial which is provided for by law.

SOURCE: Added by P.L. 22-149:3 (12/29/94). Repealed/reenacted by P.L. 23-27:2 (6/27/95). Subsection (n) added by P.L. 24-113:2.1. Subsection (f) amended by P.L. 29-113:VI:73 (Sept. 30, 2008). Subsection (h) amended by P.L. 29-113:VI:74 (Sept. 30, 2008). Subsection (i) amended by P.L. 29-113:VI:75 (Sept. 30, 2008). Subsection (l) amended by P.L. 29-113:VI:75 (Sept. 30, 2008). Subsection (m) amended by P.L. 29-113:VI:76 (Sept. 30, 2008). Subsection (n) amended by P.L. 29-113:VI:77 (Sept. 30, 2008).

2021 NOTE: References to "territory" removed and/or replaced with "Guam" pursuant to 1 GCA § 420.

§ 34.80. Use of Fines Collected.

Effective upon the enactment of this Section, all monies collected by the enforcement of 9 GCA §§ 34.60 or 34.70 shall be deposited in the Appointed Counsel Trust Fund established under 7 GCA § 22111 for fees and expenses related to the legal defense of indigent persons and for other purposes as set forth by the Judicial Council.

SOURCE: Added by P.L. 23-27:6 (6/27/95). R/R by P.L. 26-152:IV:14 (9/30/2002).

§ 34.90. Destruction of Property: Penalty.

A person commits a misdemeanor if, he without the written permission of the owner or of the owner's agent or of the person in lawful possession:

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(a) Maliciously tears down, damages, mutilates or destroys any sign, signboard or notice placed upon, or affixed to any property that belongs to the government of Guam, which sign, signboard or notice is intended to indicate or designate a road or highway or is intended to designate speed limits or a traffic hazard or is intended to direct travelers from one point to another or is intended to advise of prohibited entry or relates to fires, fire control, trespassing or other matters involving the protection of the property;

(b) Wilfully opens, tears down or otherwise destroys any fence on the land of another or wilfully removes, injures, cuts or tampers with any lock or any locked gate or any locked chain or any other locked barrier on any road, track or trail leading into lands of another or maliciously tears down, mutilates or destroys any sign, signboard or other notice forbidding shooting on public or private property; or

(c) Enters any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing or injuring any lawful business or occupation carried on by the owner of such land, his agent or by the person in lawful possession; or

(d) Enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, any other or enters upon uncultivated and unenclosed lands belonging to, or occupied by, any other where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries on all roads and trails entering such lands:

(1) For the purpose of hunting, shooting, killing or destroying any animal or bird upon such lands; or

(2) Discharges any firearms upon such land or lands; or

(3) Refuses or fails to leave such lands immediately upon being requested to leave by the

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owner of such land, his agent or by the person in lawful possession; or

(4) Tears down, mutilates or destroys any sign, signboard or notice forbidding entry on such lands.

(e) Enters upon any lands declared closed to public entry by the Government where such closed lands are posted with notices declaring such closure at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through such lands declaring the lands closed to public entry or stating "no trespassing." The Director of the Department of Land Management, in compliance with the Administrative Adjudication Act, is authorized to designate as closed to public entry and post "no trespassing" signs on any portion or portions of property belonging to the Government upon his determination that such designation is reasonably necessary for the purpose of public safety, preservation of government property, conservation of resources, fire prevention, safety of adjoining property owners or prevention of nuisances.

SOURCE: Added by P.L. 16-079:1 (May 4, 1980) as 9 GCA § 70.41. Renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

2021 NOTE: Reference to "territory" replaced with "Guam" pursuant to 1 GCA § 420.
