

9 GCA CRIMES & CORRECTIONS  
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CHAPTER 64  
GAMBLING

- Article 1. Gambling Generally.  
Article 2. Authorized Activities.

ARTICLE 1  
GAMBLING GENERALLY

- § 64.10. Gambling; Defined & Punished.  
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§ 64.22A. Slot Machines.

**§ 64.10. Gambling; Defined & Punished.**

(a) Except as otherwise provided by this Chapter, a person commits a misdemeanor when he:

- (1) makes or accepts a wager involving money or anything of monetary value upon the result of any game or contest;
- (2) holds any money or anything of monetary value which he knows has been wagered in violation of Paragraph (1); or
- (3) sets up or promotes any lottery or sells or buys any lottery ticket.

(b) As used in this Section, *lottery* means a plan whereby prizes are distributed by chance among persons who have paid or promised to pay anything of monetary value for a chance to win a prize.

**SOURCE:** G.P.C. §§ 319-321, 330, 330a, 532b; See also §§ 322, 323, 331; \*Cal § 1555(a)(c) (1971).

**CROSS-REFERENCES:** §§ 4.60, 4.65 -Aiding, Facilitating an offense; § 64.30 - Social Games; § 64.40 - Cockfight; § 64.50 -Authorized lotteries; §§ 64.60-64.68 - Bingo.

**§ 64.20. Importation of Gambling Devices to Guam Illegal: Defined and Punished.**

(a) A person commits a felony when he imports or attempts to import, or causes to import a gambling device, whether operable or not, into the

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territorial jurisdiction of Guam, or manufactures a gambling device within the Territory of Guam.

(b) As used in this Section, gambling device means any coin operated device which, when operated, may return winnings (other than free games not redeemable for cash) of value to the user based partially or completely upon chance, by the operation of which a person may become entitled to receive winnings of value. It does not include pinball and other amusement machines or devices which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not. It does include any slot machines, video poker machines and other machines or devices which afford the opportunity of winnings, payouts, malfunction refunds to the player, or giving the player or user anything of value under any guise or form based partially or completely upon chance.

(c) Any gambling device in violation of this Section shall be subject to seizure and forfeiture. Any slot machine shall be subject to seizure and forfeiture.

(1) Any property subject to forfeiture under this Section shall be seized by a peace officer, including Guam Customs Officer, upon process issued by the Superior Court, except that seizure without such process may be made when the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; the property subject to seizure has been the subject of a prior judgment in a criminal injunction or forfeiture proceeding based upon this Section; or the peace officer has probable cause to believe that the property has been used or intended to be used in violation of this Section. In the event of a seizure pursuant to this Subsection, proceedings under Subsection (d) shall be instituted promptly.

(d) Property taken or detained under this Section shall not be replevable, but shall be deemed to be in the custody of the government subject only to the orders and decrees of the Court. Whenever property is seized under the provisions of this Section, the government shall destroy all gambling devices seized and forfeited upon order of the Court.

(e) Any person found guilty of the importation, attempted importation or causing the importation of gambling devices to Guam, or who is found guilty of manufacturing a gambling device in Guam, shall be guilty of a felony and be subject to imprisonment for not more than five (5) years, a

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fine not to exceed Twenty-five Thousand Dollars (\$25,000.00) per gambling device, or both such fine and imprisonment

**NOTE:** § 6420 of Title 9, Guam Code Annotated, is hereby repealed and any and all remaining balances are reverted to the General Fund. All revenue previously earmarked into this Fund shall continue to be collected and credited to the General Fund.

P.L. 23-128:IV:13 repeals § 6420, 9 GCA. § 6420 of Title 9 GCA does not exist. Title 9 GCA, § 64.20, as enacted before this section, makes no reference to a Gambling Device Fund. However, the legislature intended to repeal and revert the balance of the Gambling Device Fund to the General Fund along with other special funds indicated in this act. Section 64.20 (g), Title 9 GCA, (enacted by P.L. 19-4:3) and section 22209, Title 11, GCA (enacted by P.L. 18-7:12 as amended) both of which made references to the revenues of the Gambling Device Fund was repealed by P.L. 19-24.

**SOURCE:** G.P.C. § 330a; \*Cal. § 1560 (1971). Subsection (b) amended by P.L. 18-07:11. R/R by P.L. 19-04:3, which became law on May 21, 1987; subsections (f) & (g) were repealed by P.L. 19-24:9. Reenacted by P.L. 24-1:3.

**CROSS-REFERENCES:** Hawaii Penal Code, §§ 712-1220(5) "Gambling Device."

**COMMENT:** § 64.20, as enacted, differs from the Commission's proposal in that Subsection (a) refers to certain authorized exceptions already contained in the Government Code of Guam allowing possession of slot machines in certain instances. Further, the definition of "gambling device" appeared to have been limited from the Commission's proposal. The Commission proposed that a "gambling device" means "a device that, as a result of the insertion of money ...". It is unclear whether this definition includes devices which have, as their operating mechanism, electronics only and do not use mechanical wheels or mechanical force, even though these machines operate in an identical fashion to the traditional mechanical slot machines.

This Section is a great improvement over the Penal Code in that, for the first time, the mere possession of gambling devices is prohibited without any additional requirement that they actually be used for gambling. It is this grave deficiency of the Penal Code that has prohibited local authorities from seizing slot machines heretofore due to lack of proof of their actual use of gambling devices, despite the obvious fact that they may be so used. Further, Subsection (c) provides for the forfeiture of such machines.

**COURT DECISIONS:** SUPERIOR COURT, 1978. Import of statute is to hold liable one who has control, dominion and pecuniary interest in a "gambling device," rather than such person's employee if such employee has no such control, dominion or pecuniary interest. *People v. Concepcion*, Sup. Ct. Cr. #37-78 (Order, 06/27/78; Abbate, P.J.)

C.A.9 1981 Public Law 13-135, providing for a "gambling zone" at the airport, provides only a limited exemption to 15 U.S.C. § 1172 and the exemptions were not applicable to the machines in this case. *U.S. v. Various Slot Machines on Guam*, 658 F.2d 697.

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**SOURCE:** Reenacted by P.L. 24-1:3.

**§ 64.21. Poker Machines and Video Lottery Terminals.**

A person commits a misdemeanor when he places or causes to be placed a poker machine or video lottery terminal on or about the premises of any government building, or on or about the premises of any government or private school.

**SOURCE:** Enacted by P.L. 18-07:8.

**§ 64.22. Possession of Gambling Devices Prohibited; Penalty.**

(a) A person commits a misdemeanor when he possesses a gambling device, whether operable or not, unless the gambling device is located upon or is being transported by a vessel regularly operating and engaged in domestic or foreign commerce and is located in a locked compartment of the vessel and is not accessible for use and is not used or operated within the jurisdiction of this territory.

(b) As used in this Section gambling device has the same meaning as set forth in § 64.20 of this Chapter.

(c) Any person possessing a gambling device in violation of this Section shall be guilty of a misdemeanor, and be subject to imprisonment, for not more than one year, a fine not to exceed one Thousand Dollars (\$1,000.00) for each gambling device, or with imprisonment or fine.

(d) In addition to any other penalty provided by law, any illegal gambling device in violation of this Section shall be subject to the same seizure and forfeiture provisions for illegal importation under Section 64.20 of this Chapter.

(e) Notwithstanding the provisions of this section, any poker machine now on Guam which was on Guam on the day immediately preceding the effective date of this Act and which complied with territorial law as to possession on the day immediately preceding the effective date of this Act may be shipped off-island or destroyed or disposed of within six months of the effective date of this Act, without seizure or criminal penalties provided that such Poker Machine is not used for gambling or entertainment purposes after the effective date of this Act. The Guam Police Department shall monitor the shipment or disposal of such gambling devices. The Director of the Department of Revenue and Taxation shall cooperate fully with the Guam Police Department in providing all pertinent records relative to poker machines in the territory. Any poker machines not shipped off-island within

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six months or otherwise disposed of shall be subject to seizure in accordance with subsection (d) of this Title.

**SOURCE:** R/R by P.L. 19-24:10.

**§ 64.22A. Slot Machines.**

No section of this Act shall be construed to allow the operation of slot machines in the Territory of Guam.

**SOURCE:** P.L. 19-04:5, codified by Compiler.

**NOTE:** "This Act" [P.L. 19-4] also dealt with gambling devices in the following sections: Sec. 2, repealing GC § 19200.5, exempting certain devices from provisions of 15 USC § 1172; Sec. 3, R/R 9 GCA § 64.20, importation of gambling devices; Sec. 4, adding 9 GCA § 64.22, hours of operation of gambling places; Sec. 6, adding 9 GCA § 64.23, minors' entry to gambling places; Sec. 7, adding GC § 19200.02 requiring meters on poker machines, and Sec. 8, effective date for Section 7.

**NOTE:** Section 64.23 was repealed by P.L. 19-24:11.

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**ARTICLE 2**  
**AUTHORIZED ACTIVITIES**

- § 64.30. Social Gambling Defined & Permitted.
- § 64.40. Legal Cockfight Gambling Permitted.
- § 64.50. Authorization for Wagers.
- § 64.62. Authorization for Gambling at Fairs and Possession of Gambling Devices.
- § 64.65. Amusement Devices.
- § 64.70. Organizations Authorized to Conduct Gambling: Permit Procedure.

**§ 64.30. Social Gambling Defined & Permitted.**

Section 64.10 does not apply to making or accepting a wager upon the result of a game or contest when:

- (a) the game or contest takes place on private premises;
- (b) all the wagerers are present at that premise;
- (c) no charge is made directly or indirectly as a condition of entering the premises or wagering upon the result of the game or contest; and
- (d) nothing is sold, offered for sale or rented on the premises.

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**SOURCE:** \*Cal. § 1555 (b) (2), (d) (1971).

**CROSS-REFERENCES:** Hawaii Penal Code § 712-1231 - "Social Gambling."

**COMMENT:** § 64.30 is new. The purpose of this exception is to exclude from criminal liability games played for money in a private house where all profits and losses are shared by the players. This type of game is a common social occurrence on Guam and has been conducted both clandestinely and openly, at places such as wakes even though it is illegal under the Penal Code. Inclusion of such conduct within the criminal law tends to encourage disrespect for enforcement and the law itself. It might be noted that such games as craps and roulette are banking on percentage games and are not excluded by § 64.30(a).

The exceptions contained within Article II of this Chapter are not denominated as either "affirmative" or regular defenses. Therefore, it will be assumed that a defendant would treat a claim of exception as a regular defense to a prosecution for gambling. This is contrary to the Hawaii Penal Code on the subject.

**§ 64.40. Legal Cockfight Gambling Permitted, and Penalties for Non-Compliance.**

(a) Section 64.10 does not apply to making or accepting a wager upon the result of a cockfight when:

- (i) the cockfight takes place at a licensed cockpit; and
- (ii) all the wagerers are present at the cockpit and are eighteen (18) years of age or more.

(b) Penalties. The following penalties shall be established, which shall be considered in conjunction with the provisions contained within § 64.10 of this Chapter, and shall apply to the owner of said property and establishment being utilized for such activities:

- (i) for the first offense, a fine of Five Hundred Dollars (\$500.00) shall be assessed; and
- (ii) for a second offense and for each subsequent offense(s), a fine of Two Thousand Dollars (\$2,000.00) shall be assessed.

**SOURCE:** \*G.P.C. § 330. Repealed/reenacted by P.L. 26-52:2.

**COMMENT:** § 64.40 continues the traditional exception found in the Penal Code by allowing wagering at the cockfights, provided that the persons wagering are present, not minors, and are at a licensed cockpit. In 2001 The Legislature increased the penalties for violation of illegal cockfighting.

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**§ 64.50. Authorization for Wagers Pursuant to Title LXIV Government Code.**

Section 64.10 does not apply to making or accepting a wager authorized by 11 GCA Chapter 5 [Dog Racing].

**NOTE:** Sections 64.55 and 64.60 were repealed P.L. 19-19:30 and P.L. 19-19:32, respectively.

**COMMENT:** §§ 64.50 through 64.60 states specific exceptions from the gambling prohibitions for activity which are authorized by various chapters of the Government Code dealing with lotteries, Jai Alai and dog racing.

**§ 64.62. Authorization for Gambling at Fairs and Possession of Gambling Devices.**

Section 64.10 of this Title does not apply to any gambling conducted by a person who has been issued a permit by the Governor for concessions operated during a fair or carnival, and Section 64.20 of this title does not apply to possession of any temporarily licensed gambling device during any Guam Island Fair, Liberation Day Carnival or any other fair or carnival for which the Governor has issued a proclamation.

**SOURCE:** Added by P.L. 16-120; amended by P.L. 18-40:64.

**§ 64.65. Amusement Devices.**

Section 64.10 does not apply to the making or accepting of a wager on amusement devices licensed pursuant to 11 GCA § 22202; provided that § 64.10 shall apply to the making or accepting of a wager on an amusement device licensed pursuant to 11 GCA § 22202 if such device is located on or about the premises of any government building, located on or about the premises of any government or private school, or if such amusement device is operated by a person under the age of eighteen (18) years.

**SOURCE:** Added by P.L. 18-07:6.

**§ 64.70. Organizations Authorized to Conduct Gambling: Permit Procedure.**

(a) Sections 64.10 and 64.20 do not apply to gambling activities sponsored, promoted and conducted by an organization which has been issued a permit to conduct such activities pursuant to Subsection (c).

(b) A permit to conduct gambling activities shall be issued by the Director of the Department of Revenue and Taxation if:

(1) the organization which applies for the permit has been organized and functioning actively as a nonprofit organization in the

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Territory for not less than two (2) years prior to filing its application and is:

- (A) a church or religious organization;
- (B) a fraternal or fraternal benefit society;
- (C) an educational or charitable organization; or

(D) a club or organization organized and operated exclusively for pleasure, recreation and other nonprofit purposes not part of the net earnings of which inures to the benefit of any member or shareholder;

(2) the promotion and management of such bingo games or lottery (raffle tickets) are confined solely to the qualified members of the sponsoring organization, no member of which receives remuneration in any form for time or effort devoted to the promotion and management of the bingo games or lottery (raffle tickets); and

(3) all net proceeds derived from such gambling activities are used exclusively for the purposes stated in the sponsoring organization's application to conduct such activities, which purposes shall be limited to educational, charitable, religious, fraternal or civic purposes.

(c) An organization which meets the requirements of Subsection (b) and which desires to conduct or operate gambling activities shall apply for a permit to conduct such activities from the Director of the Department of Revenue and Taxation. The application form shall include the name and address of the applicant, the evidence on which the applicant relies in order to qualify under Subsection (b), the names of three (3) officers or members of the organization who shall be responsible for the operation of the gambling activities, and the uses to which the net proceeds will be applied. Upon receipt of such application the Director shall determine whether it is in conformity with this Section. If so, the Director shall forthwith issue a permit. The permit shall be valid for one (1) year from the date of its issuance. The Director shall retain a copy of the application. If there is any change subsequent to the making of the application for a permit in the facts set forth therein, the applicant shall forthwith notify the Director of such change, and the Director shall issue a permit if the applicant is qualified, or, if a permit has already been issued and the change in the facts set forth in the application disqualify the applicant, the Director shall revoke such permit.

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If an application for a permit to conduct gambling activities is not acted upon within thirty (30) days after submission, or if the organization is denied a permit, or if a permit is revoked, any person named on the application may obtain a judicial review of such inaction, refusal or revocation by filing a petition for review in the Superior Court. Such petition for review shall be filed within ten (10) days of the refusal or revocation of a permit or within ten (10) days of the expiration of the thirty (30) day period. If the court is satisfied that there was no reasonable ground for refusing a permit and that the applicant was not prohibited by law from holding gambling activities, he may direct that such permit be issued.

(d) The Director shall immediately revoke a permit in case of violation of any provision of this Section, and the Director shall not issue any permit to such permittee within three (3) years following the date of such violation. Any person aggrieved by such action may appeal to the Superior Court provided that such appeal is filed within twenty (20) days following receipt of notification by the Director. The court shall hear all pertinent evidence and determine the facts; upon the facts so determined the court shall annul such action or make such decision as equity may require. This remedy shall be exclusive.

(e) An organization which is issued a permit shall submit a report to the Director on a form to be approved by him within thirty (30) days of the expiration of the permit. Such form shall require information concerning the nature of the gambling activities held, the amount of money received, the expenses incurred in connection with such activities, the net proceeds of such activities, and the uses to which the net proceeds were applied. The organization shall maintain and keep such books and records as may be necessary to substantiate the particulars of such report; such books and records shall be preserved for at least one (1) year after such report is submitted and shall be available for inspection. The report shall be certified to by the three (3) persons designated in the permit application as responsible for such gambling activities and by an accountant. Failure to file such a report shall constitute sufficient grounds for refusal to renew a permit to conduct gambling activities.

(f) As used in this Section:

(1) *Bingo Games* means a specific game of chance, commonly known as bingo, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random;

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(2) *Lottery (Raffle Tickets)* means a plan whereby prizes are distributed by chance among persons who have paid or promised to pay anything of monetary value for a chance to win a prize; and

(3) *Gambling Activities* means either a lottery (raffle tickets) or bingo games and does not include any form of casino gambling.

**SOURCE:** G.P.C. §§ 319-329. Enacted 1977; Subsection (b)(2) repealed and reenacted by P.L. 14-140, eff. 09/01/78; Subsection (f) added by P.L. 14-140, eff. 09/01/78; amended by P.L. 14-141.

**COMMENT:** § 64.70 continues and expands the exception and registration requirements, which permits the conduct of gambling by certain charitable, fraternal, educational or religious organizations. However, there have been significant changes made. It is the Director of Revenue and Taxation who now issues the required permit, not the Governor. Also, if a permit is denied or delayed for longer than thirty (30) days judicial review is permitted. § 64.70 provides that certain gambling activities are not punishable if sponsored, promoted and conducted by an organization which has been issued a permit to conduct such activities. Subsection (f) defines the types of gambling activities in question.

§ 64.70(b) sets forth the circumstances under which the Director of the Department of Revenue and Taxation shall issue permits to conduct gambling activities. The amendment to Subsection (b)(2) deleted the words "gambling activities" each time they appeared in the subsection, and substituted in their place the words "bingo games or lottery (raffle tickets)".

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