

**9 GCA CRIMES AND CORRECTIONS
CH. 28 PUBLIC INDECENCY**

**CHAPTER 28
PUBLIC INDECENCY**

Article 1. Prostitution.

Article 2. Obscenity and Related Offenses.

**ARTICLE 1
PROSTITUTION**

§ 28.10. Prostitution Defined; Punishment Established; Definitions.

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§ 28.30. Compelling Prostitution; Punishment.

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COMMENT: (1978) Article 1 continues what appeared to be the policy of repressing commercialized sexual activity found in the former Guam Penal Code. However, because of defects in that Code which did not permit the prosecution of prostitution, per se, very little has been done in the area. This Code improves upon the situation by defining prostitution to mean engaging in, or agreeing to engage in, or offering to engage in sexual intercourse or deviate sexual intercourse in return for a "pecuniary benefit." Thus, one need prove only one act to prove prostitution rather than, as in the past, proving a "course of conduct."

§ 28.15 creates a crime of soliciting, engaging in or offering to engage in prostitution in, or in view of, a place which could be described broadly as a "public place."

§§ 28.20 and 28.25 follows the Model Penal Code in providing comprehensively for various aspects of conduct engaged in by those who exploit prostitutes for their own benefit. § 28.30 groups together conduct of aiding prostitution which is accompanied by force or duress which exploits the immature, or which victimizes a dependent person. This both broadens former law by addressing itself directly to the exploitation of dependents and minors and narrows it by excluding conduct which is peripheral to prostitution. Contrast former § 266g. Compare former §§ 273b and 309, G.P.C.

§ 28.35 deals with the admissibility of evidence proving the general repute of persons who frequent a place alleged to be a house of prostitution.

(1994) In general, P.L. 22-158 toughened definitions, penalties and the scope of the prostitution laws. Both parties to the transaction maybe prosecuted and prostitution is illegal whether or not it takes place in a "public place".

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§ 28.10. Prostitution Defined; Punishment Established; Definitions.

(a) A person who engages in, or agrees to engage in, or offers to engage in, sexual penetration or sexual contact or in any sexual conduct or act with another person in return for a fee or in consideration of a pecuniary benefit commits the crime of prostitution. It is the intent of this section that guilt attach to both the payor and the recipient of the fee or pecuniary benefit that is the consideration for the act of prostitution, except that a police officer engaged in the performance of his or her official duties in the performance of an investigation of offenses committed under this chapter shall not be charged under this section.

(b) (1) A person convicted of prostitution shall be guilty of a misdemeanor; or

(2) A person convicted of a third offense of prostitution within three (3) years of the first two (2) offenses shall be guilty of a felony of the third degree; or

(3) A person convicted of prostitution who is determined to have known that he or she was infected with either HIV or AIDS at the time of the commission of the act shall be guilty of a felony of the first degree.

(c) As used in this section, the terms *sexual penetration* and *sexual contact* have the meanings provided by § 25.10 of this title.

SOURCE: Amended by P.L. 15-60:2, eff. 08/31/79. Repealed/reenacted by P.L. 22-158:1 (12/30/94).

§ 28.15. Loitering for the Purpose of Soliciting to Engage in Prostitution.

(a) For the purposes of this *section*, *public place* means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or motor vehicle in, on or at such place, or in any building area which is open to the public.

(b) Any person who remains or wanders about in a public place and repeatedly beckons to or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing prostitution shall be guilty of a misdemeanor.

SOURCE: New Section, (1978). Repealed/reenacted by P.L. 22-158:2 (12/30/94).

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COMMENT: (1994) Guam law has been changed to considerably broaden the scope of the earlier law regarding where prostitution and the solicitation for it will be prohibited.

§ 28.20. Promoting Prostitution; Punishment ; Defense.

(a) A person is guilty of promoting prostitution who:

(1) owns, controls, manages, supervises or otherwise keeps, alone or in association with others, a place of prostitution or a prostitution enterprise; or

(2) knowingly solicits, induces or causes a person to commit or engage in prostitution or to reside in or occupy a place of prostitution.

(b) Promoting prostitution is a felony of the third degree.

(c) It shall not be a defense to a prosecution under this section that the place of prostitution or prostitution enterprise is licensed for any purpose other than prostitution or that the act or the attempted act of prostitution that is promoted occurs at a place other than the site of the offense charged under this section.

SOURCE: G.P.C. §§ 266, 266a, 266b, 266f, 315, 316; see also §§ 266e, 266f; M.P.C. § 251.2(2), (3); *Cal. § 1803 (T.D.2 1968); Cal. § 954 (1971); Mass. ch. 272, § 4(a), (f)(3); N.J. § 2C:34-2(b), (c). Amended by P.L. 22-158:3 (12/30/94).

§ 28.25. Abetting Prostitution; Punishment.

(a) A person is guilty of abetting prostitution who:

(1) solicits a person to patronize a prostitute; or

(2) procures a prostitute for himself, herself or another person; or

(3) knowingly and for the purpose of prostitution, transports any person into, out of or within Guam, or who procures or pays for the transportation of any person into, out of or within Guam for the purpose of prostitution; or

(4) knowingly permits prostitution in any premises under his or her possession or control or fails to make reasonable effort to halt or abate such use. For purposes of this paragraph, premises shall include a motor vehicle.

(b) (1) A person convicted of abetting prostitution shall be guilty of a misdemeanor; or

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(2) A person convicted of a third offense of abetting prostitution within three years of the first two offenses shall be guilty of a felony of the third degree.

SOURCE: G.P.C. §§ 266c, 266d, 316, 318; M.P.C. § 251.2(2), (3); *Cal. § 1804 (T.D.2 1968); Cal. § 954 (1971); Mass. ch. 272, § 4(a), (f)(3); N.J. 2C:34-2(b), (c). Amended by P.L. 22-158:4 (12/30/94).

COMMENT: (1977) § 28.25 creates a misdemeanor for those persons found guilty of the lesser offenses of soliciting either prostitutes or their patrons, permitting prostitution on premises they control, or transporting or paying for transportation of prostitutes in, to or out of Guam.

(1994) Penalties have been enhanced.

§ 28.30. Compelling Prostitution; Punishment.

(a) A person is guilty of compelling prostitution who:

(1) by force, threat or duress compels another to engage in, promote or abet prostitution; or

(2) causes or aids a person under the age of eighteen (18) to commit or engage in, promote or abet prostitution; or

(3) causes or aids his or her spouse, child or any person whose care, protection or support he or she is responsible for, to commit or engage in or aid or abet prostitution.

(b) (1) A person convicted of compelling prostitution shall be guilty of a felony of the third degree; or

(2) A person convicted of a third offense of compelling prostitution within three years of the first two offenses shall be guilty of a felony of the first degree.

SOURCE: G.P.C. §§ 266, 266a, 266g, 267, cf. §§ 273b, 309; M.P.C. § 251.2(2), (3); Cal. § 1805 (T.D.2 1968); Cal. § 954 (1971); Mass. ch. 272, § 4(a), (f)(3); N.J. § 2C:34-2(b), (c). Amended by P.L. 22-158:5 (12/30/94).

§ 28.35. Evidence of Place and Persons Admissible.

On the issue whether a premise is a place of prostitution, its general repute and the repute of the persons who reside in or frequent the place shall be admissible evidence.

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NOTE: The amendments made by P.L. 22-158 to this Article take effect 90 days following December 30, 1994. See P.L. 22-158:9.

P.L. 22-158:7 provides that the Act does not affect acts done, penalties accrued or proceedings undertaken prior to its effective date.

ARTICLE 2
OBSCENITY AND RELATED OFFENSES

- § 28.40. Definitions.
- § 28.45. Obscenity: Standards.[Repealed]
- § 28.49. Same: Distribution.
- § 28.50. Same: Participation In.
- § 28.51. Same: Employment of Minor.
- § 28.52. Use of One's Child in Obscene Acts.
- § 28.55. Defenses.
- § 28.60. Disposition of Obscene Material.
- § 28.65. Indecent Exposure; Defined & Punished.
- § 28.70. Loitering to Solicit Sexual Contact; Defined & Punished.
[Repealed]
- § 28.80. Photography of Minors' Sexual Acts: Punished.

COMMENT: The provisions set forth in this Article relating to obscenity are believed to conform to the standards presently set by the U.S. Supreme Court (1976). This is, however, a volatile area of the law and the Commission has not attempted it to update this provision to cover developments in the last two (2) years. This must be done if, upon further research, it appears that there are any serious defects in this Article. Since the trend of the Supreme Court has been to give more power to "local standards" this Article is probably somewhat more limited than the Supreme Court would require at the time of enactment (1977).

The main benefit of this Article is that it creates a standard by which the jury and court may determine what is obscene, a fatal defect in the former law. Certain defenses are allowed, most of which reflecting the view that the private view of obscene material or their receipt by children when accompanied by responsible adult, no matter how morally objectionable, should not be contrary to law.

This Article covers "public lewdness" and seals a gap in the former law of obscenity by providing means for the destruction of obscene materials.

§ 28.40. Definitions.

As used in this Article:

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(a) *Material* means any picture, drawing, photograph, motion picture or pictorial representation, or any statue or other figure, or any mechanical, chemical or electrical reproduction, or anything which is or may be used as a means of communication (other than the written or spoken word). Material includes molds, printing plates and other latent representational objects.

(b) *Prurient interest* means a shameful or morbid interest in nudity, sex or excretion.

(c) *Performance* means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to dancing, acting, simulating or pantomiming which is either public or for commercial gain.

(d) *Distribute* means to transfer possession of material.

(e) Any material or performance is *obscene* if:

(1) The average person, applying contemporary community standards, finds that the material or performance, taken as a whole, appeals to the prurient interest; and

(2) The material or performance depicts or describes in a patently offensive way, sexual conduct, normal or perverted, actual or simulated; and

(3) The material or performance, taken as a whole, lacks serious literary, artistic, political or scientific value.

(f) *Sadomasochistic abuse* means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(g) *Sexual conduct* means acts of masturbation, excretory functions, lewd exhibition of the genitals, sadomasochistic abuse, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.

(h) *Owner* means any person who owns or has legal right to possession of any material.

SOURCE: G.P.C. §§ 266g, 315; M.P.C. § 251.2(6); *Cal. § 1806 (T.D.2 1968); Mass. ch. 272, § 4(d); amended by P.L. 16-84.

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§ 28.45. Obscenity: Standards.

[Repealed by P.L. 16-84]

§ 28.49. Same: Distribution.

Every person who knowingly sends or causes to be sent, or who in Guam possesses, prepares, publishes, shows, prints or who offers to distribute, distributes or exhibits to another any obscene material, when such act or acts are public or for commercial gain, is guilty of a misdemeanor.

SOURCE: Added by P.L. 16-84.

§ 28.50. Same: Participation in.

Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance which is public or for commercial gain is guilty of a misdemeanor.

SOURCE: G.P.C. § 311(2-7); M.P.C. § 251 4(2); *Cal. § 1751 (T.D.2 1968); Cal. §§ 964, 972 (1971); Mass. ch. 272, §§ 5 & 6. Enacted 1977 as § 28.50(h); renumbered as § 28.50(g) by P.L. 14-137, eff. 07/25/78; R/R by P.L. 16-84.

COMMENT: § 28.50 punishes as a misdemeanor certain acts, if done knowingly or recklessly. Subsection (g), formerly numbered Subsection (h), is one of those acts.

§ 28.50 punishes as a misdemeanor certain acts, if done knowingly or recklessly. Subsection (h), formerly numbered Subsection (g), makes those acts first-degree felonies under certain circumstances.

§ 28.50 restates Paragraphs (2) thru (7) of § 311 of the Penal Code.

§ 28.51. Same: Employment of Minor.

A person is guilty of a felony of the third degree if he knowingly or recklessly employs or uses a minor under the age of sixteen (16) years to do or assist in doing any of the acts described in §§ 28.49 or 28.50 of this Chapter.

SOURCE: Added by P.L. 16-84.

§ 28.52. Use of One's Child in Obscene Acts.

A person is guilty of a felony of the first degree if while having custody or control of any child under the age of sixteen (16) years, he shall knowingly permit that child to be used in or be a party to any material or performance that is obscene.

SOURCE: Added by P.L. 16-84.

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§ 28.55. Defenses.

It shall be an affirmative defense in a prosecution under this Article for the defendant to show:

(1) That the distribution was made to the recipient by a bona fide school, museum or public library or by an employee of such organization acting in the course of his employment or of a retail outlet affiliated with and serving the educational purposes of such organization; or

(2) That the act was done for legitimate scientific or education purposes.

SOURCE: M.P.C. § 251.4(3); *Cal. § 1753 (T.D.2 1968); *Cal. §§ 964, 972 (1971); R/R by P.L. 16-84.

§ 28.60. Disposition of Obscene Material.

When the conviction of any person for the commission of any offense defined in § 28.50 becomes final, copies of any obscene material described in the indictment, information or complaint or admitted in evidence which were taken from the possession of the defendant and which are in the possession or under the control of the Attorney General or any law enforcement officer or the clerk of the court may be destroyed upon order of the court. A copy of the order shall be mailed to the defendant and his counsel by the clerk of the court. The date fixed for the destruction of the obscene material must be at least thirty (30) days after the mailing of the order.

SOURCE: G.P.C. § 314; *Cal. § 1754 (T.D.2 1968); Cal. § 968 (1971).

COMMENT: While § 28.60 continues the substance of former § 314 of the Penal Code, this Section now provides for destruction upon a court order after notice to the defendant and allowance of 30-day period for the defendant's response, if any, to the notice. This latter requirement has been made into a constitutional requirement by the U.S. Supreme Court and, therefore, a necessary part of the Guam Penal Code.

§ 28.65. Indecent Exposure; Defined & Punished.

A person commits a petty misdemeanor if he exposes his genitals or performs any other lewd act under circumstances in which his conduct is likely to be observed by any person who would be offended or alarmed.

SOURCE: G.P.C. § 311(1); M.P.C. § 251.1; Cal. § 609 (T.D.1 1967); Cal. § 914 (1971); Mass. ch. 272, § 3; N.J. § 2C:34-1.

CROSS-REFERENCES: 9 GCA §§ 80.34, 80.64 and 80.62.

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COMMENT: This Section continues the crime of “indecent exposure” while § 28.70 covers a portion of the former crime of “vagrancy” and makes the prohibited behavior sufficiently precise so as to avoid the constitutional infirmities which have voided much of the former crime of “vagrancy.” This Section differs from § 28.10 in that the solicitation prohibited by this § 28.10 is not “for hire.” The behavior prohibited here is nuisance behavior engaged in by sexual deviates of all types.

§ 28.70. Loitering to Solicit Sexual Contact; Defined and Punished.

[Repealed]

SOURCE: cf. G.P.C. §§ 647(8), 647a; M.P.C. § 251.3; *Cal. § 1610 (T.D.1 1967); Cal. §§ 912, 938 (1971); N.J. 2C:14-3. Repealed by P.L. 22-158:6 (12/30/94).

CROSS-REFERENCES: (1994) See § 28.15 of this Chapter for the replacement section.

§ 28.80. Photography of Minors' Sexual Acts: Punished.

A person commits a felony of the first degree if he knowingly:

(1) sells or offers for sale publications, pictures or films that depict minors under 16 years of age performing sexual acts; or

(2) photographs minors under 16 years of age to engaging [sic] sexual acts.

SOURCE: Added by P.L. 14-137, eff. 07/25/78.

COURT DECISIONS: SUPERIOR COURT, 1978. Although Guam's obscenity statutes [9 GCA § 28.40 et seq.] contain no specific definitions of prohibited sexual conduct, those statutes include by implication the examples of conduct set forth in *Miller v. California*, 413 U.S. 15, 93 Sup. Ct. 2607 (1973). *People v. Daly*, Sup. Ct. Cr. #35-78 (Order, 05/12/78; Abbate, P.J.)

SUPERIOR COURT, 1978. The examples of conduct set forth in *Miller v. California*, 413 U.S. 15, 93 Sup. Ct. 2607 (1973), having been adopted by implication as the only specific examples of prohibited sexual conduct, those examples constitute the beginning and end of the obscenity area; thus, sexual conduct not defined by statute cannot be criminal. *People v. Schott*, Sup. Ct. Cr. #104-78 (Order, 06/19/78; Raker, J.)
