

9 GCA CRIMES AND CORRECTIONS
CH. 61 RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

CHAPTER 61
RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

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COMMENT: Chapter 61 covers a variety of public-type disturbances ranging from corpses to full-fledged riots. This Chapter departs from prior law in that it depends upon the person's action as they may endanger or seriously annoy others. This Chapter has been drawn so as to avoid the First Amendment problems which have occurred in past sections of a similar nature.

§ 61.10. Riot: Failure to Disperse: Defined & Punished.

(a) A person is guilty of riot, a felony of the third degree, if he participates with four (4) or more others in a course of disorderly conduct:

- (1) with intent to commit or facilitate the commission of a felony or misdemeanor;
- (2) with intent to prevent or coerce official action; or
- (3) when he or any other participant to his knowledge uses or plans to use a firearm or other deadly weapon.

(b) Where four (4) or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance or alarm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

SOURCE: G.P.C. §§ 404, 405, 409, 416, See also §§ 406, 408; *M.P.C. § 250.1; Cal. §§ 260, 1205, 1215 (1971); Mass. ch. 269, §§ 1, 2; N.J. § 2C:33-1, 2C:33-2.

CROSS-REFERENCES: cf. § 404, Penal Code.

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COMMENT: The offense of “disorderly conduct” (§ 61.15) reaches the violent, tumultuous, noisy and dangerous aspects of either individual or group behavior. However, a distinct riot offense is justified: (1) to provide aggravated penalties for disorderly conduct where the number of participants makes the behavior especially alarming; (2) to provide penal sanctions for disobeying police orders directing a disorderly mob to disperse; and (3) to subject to police orders persons present but not shown to be implicated in the disorderly behavior - a kind of “expanded complicity,” necessitated by the fact that police cannot be expected to distinguish participants from non-participants intermingled in a mob.

Defining riot as an aggravation of disorderly conduct prevents application of riot penalties to peaceful joint behavior of which the police may disapprove on the ground that it tends to provoke others to violent reactions, or even to assemblies to commit offenses unattended by circumstances of disorder. Thus, this Section does not reach all of what was formerly defined as “unlawful assembly.”

§ 61.15. Disorderly Conduct; Defined & Punished.

(a) A person is guilty of disorderly conduct, if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) engages in fighting or threatening, or in violent or tumultuous behavior;

(2) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(3) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the defendant.

(b) As used in this Section, “public” means affecting or likely to affect persons in a place to which the public or a substantial group has access. Among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(c) An offense under this Section is a petty misdemeanor if the defendant's intent is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

SOURCE: G.P.C. §§ 375, 415, 415a, 416; See also §§ 229, 403b, 407; *M.P.C. § 250.2; Cal. § 1225 (1971); Mass. ch. 269, § 3; N.J. § 2C:33-2.

CROSS-REFERENCES: § 61.10 Riot.

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COMMENT: § 61.15 covers the same general ground as former Guam PC §§ 415 and 415a, proscribing the most common types of misbehavior by which individuals can make a public nuisance of themselves. The Section makes certain changes in the former language in an attempt to more sharply distinguish between criminal and non-criminal acts. For example, Subsection (a)(2) refers to “unreasonable” noise while former law referred to “loud” noise. Under this Section, a speaker cannot be held liable criminally for utterances which are provocative merely on account on of the ideas expressed.

§ 61.20. Harassment; Defined & Punished.

A person commits a petty misdemeanor if, with intent to harass another, he:

(a) makes, or causes to be made, a communication anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

(b) subjects another to striking, kicking, shoving or other offensive touching, or threatens to do so; or

(c) engages in any other course of alarming conduct or of repeatedly committed acts which alarm or seriously annoy such other person serving no legitimate purpose of the defendant.

(d) Every person who with intent to annoy, telephones, telefaxes, or communicates by use of any telephone network, data network, text message, instant message, computer, computer network, or computer system with another person and addresses to or about such other person any obscene language is guilty of a misdemeanor.

(e) Every person who makes a telephone call, telefax transmission, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system with intent to annoy and without disclosing his true identity to the person answering the telephone or receiving the telefax transmission or transmission received from any telephone network, data network, text message, instant message, computer, computer network, or computer system, whether or not conversation or return transmission ensues from making the telephone call or the transmission, is guilty of a misdemeanor.

(f) Any offense committed by use of a telephone, telefax machine, or any telephone network, data network, text message, instant message, computer, computer network, or computer system as set out

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in this Section may be deemed to have been committed at either the place at which the telephone calls, telefax transmissions, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system were made or received. In the event that a customer of a telephone service provider, wireless service provider, or an internet service provider receives harassing telephone calls or transmissions received via or by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system, such customer may file an injunction complaint under the name of John Doe, although the telephone service provider may release the name, address, and telephone number of the plaintiff to the Superior Court of Guam. The telephone service provider, wireless service provider, or an internet service provider *shall* disconnect all telephone services or computer or wireless services to any subscriber who has violated the provisions of this Section *more than one* (1) time.

(g) Subsections (d) or (e) of this Section are violated when the person acting with intent to annoy makes a telephone call, telefax transmission, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system requesting a return call or return transmission and performs the acts prohibited under such Subsections upon receiving the return call or transmission.

SOURCE: G.P.C. §§ 640a, 653f; M.P.C. § 250.4 Cal. §§ 1225, 1460 (1971); Mass. ch. 269, §§ 5, 6; *N.J. § 2C:33-4. Subsections (d), (e), (f), and (g) added by P.L. 21-12:1. Subsection (f) amended by P.L. 27-109:12. Amended by P.L. 31-009:4 (Mar. 9, 2011).

COURT DECISIONS: SUPER.CT. 1982. § 61.20, by defining harassment as striking, kicking, shoving or other offensive touching, clearly identifies the prohibited act and, therefore, does not violate the Fourteenth Amendment of the Constitution for vagueness, nor does it prohibit any activity protected by the First Amendment of the Constitution. *People v. Jackson*, Cr. #377-82.

SUPER. CT. 1983. Subsections (a) and (b) of § 61.20 are unconstitutional because they fail to adequately define and limit the activity which is criminal. *People v. Lizama*, S.CT. Cr. #646-82.

COMMENT: § 61.20 continues the policy behind former § 640a (obscene telephone calls); § 650 (threatening letters), and § 653f (annoying telephone calls) and also provides for private annoyances not covered by § 61.15 because of the latter's

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limitation on disturbances of some general impact and not covered under Chapter 19, Assault.

§ 61.20.1. Definitions.

Unless otherwise indicated, as used in § 61.20:

(a) *Computer* means any electronic, magnetic, optical, electrochemical, *or* other high-speed data processing device performing logical, arithmetic, *or* storage functions, and includes all computer equipment connected *or* related to such a device in a computer system *or* computer network, but *shall not* include an automated typewriter or typesetter, a portable hand-held calculator, *or* other similar device.

(b) *Computer network* means two (2) or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

(c) *Computer system* means a set of interconnected computer equipment intended to operate as a cohesive system.

SOURCE: Added by P.L. 31-009:5 (Mar. 9, 2011).

§ 61.25. Public Drunkenness; Defined & Punished.

(a) A person is guilty of an offense if he appears in any public place manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property or annoy persons in his vicinity.

(b) An offense under this Section constitutes a petty misdemeanor if the defendant has been convicted hereunder twice before within a period of one year. Otherwise the offense constitutes a violation.

SOURCE: G.P.C. §§ 652; See also § 647(9) (10); *M.P.C. § 250.5; Cal. § 1235, 1240 (1971); N.J. § 2C:33-5.

COMMENT: While it might be desirable to provide a non-criminal remedy for getting intoxicated persons off the street, none has been found. Until one is, a penal remedy coupled with adequate sentencing authority to provide treatment and cure seems to provide the only reasonable alternative.

§ 61.30. Loitering or Prowling; Defined & Punished; Defenses.

(a) A person commits a violation *if* he loiters *or* prowls in a place, at a time, *or* in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons *or* property in the

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vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a peace officer, refuses to identify himself, *or* manifestly endeavors to conceal himself *or* any object.

A person commits a violation *if* he loiters *or* prowls in *or* in close proximity to a school bus stop, at a time, *or* in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons *or* property in the vicinity.

(b) Unless flight by the person *or* other circumstances makes it impracticable, a peace officer *shall* prior to any arrest for an offense under this Section afford the person an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.

(c) No person *shall* be convicted of an offense under this Section *if* the peace officer did not comply with Subsection (b) *or if* it appears at trial that the explanation given by the person was true and, *if* believed by the peace officer at the time would have dispelled the alarm.

SOURCE: G.P.C. §§ 367, 647(3), (4), (6), § 467a; *M.P.C. § 250.6; Cal. § 1230 (1971); N.J. § 2C:33-7. Amended by P.L. 29-055 (Mar. 19, 2008).

CROSS-REFERENCES: Chapter 30, Cr. Proc., Code - "Stop & Frisk Act" Chapter 20, Cr. Proc. Code - "Arrest"

COMMENT: Section 61.30 penalizes what may be called "alarming loitering". In contrast with Penal Code § 647, this Section does not create a crime of status based upon past behavior. Ample room is allowed for police discretion in arresting persons suspected of having committed or being about to commit an offense; on the other hand, it guards against unreasonable arrest and search by requiring a request for identification and explanation before the police may arrest.

§ 61.35. Obstructing the Public Ways; Defined & Punished.

(a) A person commits a petty misdemeanor if he or she unreasonably obstructs the free passage of foot or vehicular traffic on any public way, and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement officer.

(b) A person commits a petty misdemeanor if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way for the purpose of handbilling as defined by Title 16 GCA Section 3701 or for soliciting as defined by Title 16 GCA Section 3341.

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(c) As used in this Section, public way means any public highway or sidewalk, private way laid out under authority of statute, way dedicated to public use, or way upon which the public has a right of access or has access as invitees or licensees.

SOURCE: M.P.C. § 250.7; Cal. § 1225(a)(3) (1971); *Mass. ch. 269, § 7; N.J. § 2C:33-8. Amended by P.L. 28-28:4.

COMMENT: This is a new Section to Guam and sorely needed. This Section would make criminal the act of blocking what is defined by Subsection (b) as the “public way”. For the first time, police would be permitted to take action when some landowner unreasonably blocks a road which has been regarded as, and can be defined as a “public way”. Heretofore, the police have been powerless in such cases, and have been required to leave the matter up to the village commissioner, or other civil remedy.

§ 61.40. Disrupting Public Gatherings; Defined & Punished.

A person commits a violation if, with intent to prevent or disrupt a lawful meeting, procession or gathering, he does any act tending to obstruct or interfere with it physically, or makes any utterance, gesture or display designed to outrage the sensibilities of the group.

SOURCE: G.P.C. §§ 58, 81, 302, 403; See also § 375a; *M.P.C. § 250.8; Cal. § 1220 (1971); Mass. ch. 269, § 8; N.J. § 2C:33-9.

COMMENT: Section 61.40 generalizes the offense of disrupting meetings proscribed in Penal Code §§ 58, 81, 302 and 403. Here the defendant's freedom of speech must be balanced against the equally cherished freedom of associations, religion and peaceful communication. It is a difficult line to draw and the Section requires a specific “intent to prevent or disrupt a lawful meeting” and limits the penalty for violation of this Section to a fine.

§ 61.45. Desecration Defined & Punished.

(a) A person commits a misdemeanor if he intentionally desecrates any public monument or structure, or place of worship or burial, or if he intentionally desecrates the national flag or any other object of veneration by the public or a substantial segment thereof in any public place.

(b) As used in this Section, desecrate means defacing, damaging, polluting or otherwise physically mistreating in a way that the person knows will outrage the sensibilities of persons likely to observe or discover his action.

SOURCE: G.P.C. §§ 310, 310a; cf. §§ 622, 622a; *M.P.C. § 250.9; Mass. ch. 269, § 9 N.J. § 2C:33-10.

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COMMENT: Section 61.45 expands upon Penal Code §§ 310 and 310a to provide for desecration not only of the flag but also of public monuments, places of worship and burial, and other object of veneration.

§ 61.50. Disinterring a Corpse; Punished.

A person commits a misdemeanor if he intentionally and unlawfully disinters, removes, conceals, mutilates or destroys a human corpse or any part thereof.

SOURCE: G.P.C. §§ 290, 291, 295; M.P.C. § 250.10; *Mass. ch. 269, § 10.
