

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

**CHAPTER 28
PUBLIC INDECENCY**

2014 NOTE: Unless otherwise indicated, the Notes and Comments are the original annotations from the Criminal and Correctional Code (1977), enacted by P.L. 32-185 (Sept. 2, 1976). These annotations were included when the Criminal and Correctional Code (1977) was “recodified” as Title 9 of the Guam Code Annotated pursuant to P.L. 15-104:8 (Mar. 5, 1980). These original annotations were retained in past print publications of the GCA, and are included herein for historical purposes. The Source notes, however, have been updated to reflect subsequent changes to each provision.

- Article 1. Prostitution.
- Article 2. Obscenity and Related Offenses.

**ARTICLE 1
PROSTITUTION**

- § 28.10. Prostitution Defined; Punishment Established; Definitions.
- § 28.15. Loitering for the Purpose of Soliciting to Engage in Prostitution.
- § 28.20. Promoting Prostitution; Punishment; Defense.
- § 28.25. Abetting Prostitution; Punishment.
- § 28.30. Compelling Prostitution; Punishment.
- § 28.35. Evidence of Place & Persons Admissible.

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.”

Section 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.”

Sections 28.20 and 28.25 follows the Model Penal Code in providing comprehensively for various aspects of conduct engaged in by

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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.

Section 28.35 deals with the admissibility of evidence proving the general reputation 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 may be prosecuted and prostitution is illegal whether or not it takes place in a "public place".

§ 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.

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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).

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.

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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

(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

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(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 or 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.

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.

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- § 28.65. Indecent Exposure; Defined & Punished.
- § 28.70. Invasion of Privacy or Criminal Voyeurism and Video Voyeurism; Penalty; Definitions.
- § 28.71. Obscene Telephone Service Prohibited; Penalty.
- § 28.72. Certain Obscene Telephone Communications Prohibited; Penalty.
- § 28.80. Photography of Minors' Sexual Acts: Punished.
- § 28.90. Obscene, Anonymous, Harassing and Threatening Communications by Computer; Defined and Punished.
- § 28.100. Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor- Sexting; Crime Defined and Punished.
- § 28.101. Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor- Sexting; Mandatory Distribution of Information Brochure about Sexting by Retail Stores Who Sell Cellular Telephone Equipment or Cellular Telephone Equipment Service Contracts.
- § 28.102. Unlawful Distribution of Images; Exceptions; Definitions; and Penalties.

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.

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§ 28.40. Definitions.

As used in this Article:

(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

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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.

(i) Pornographic means any material or performance which all of the following coalesce:

(1) The average person, applying contemporary community standards, would find that taken as a whole, it appeals to the prurient interest.

(2) It depicts or describes sexual conduct in a patently offensive way.

(3) Taken as whole, it lacks serious literary, artistic, political, or scientific merit.

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. Subsection (i) added by P.L. 31-245:2 (Dec. 6, 2012).

§ 28.45. Obscenity: Standards.

[Repealed.]

SOURCE: CF. G.P.C. § 311; M.P.C. § 251.4(1); Cal. § 1750 (T.D. 2 1968); *Cal. § 962, 970 (1971); Mass. Ch. 272, § 6. 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.

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

Section 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.

Section 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.

§ 28.55. Defenses.

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

(a) 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

(b) 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.

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2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with “Numbers” to “Lowercase Letters” in this section.

§ 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) A person commits the crime of indecent exposure if he or she intentionally exposes their genitals or performs any other lewd act under circumstances in which their conduct is likely to be observed by any person who would be offended or alarmed.

(b) Except as provided below, indecent exposure is a misdemeanor.

Indecent exposure is a felony in the third degree if:

(1) a person intentionally exposes their genitals or intentionally performs any other lewd act to a person under the age of sixteen (16) years; or

(2) a person intentionally exposes their genitals or performs any other lewd act for the purpose of sexual gratification; or

(3) a person has previously been convicted under this

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Section; or

(4) a person has been convicted of any other sexual offense as defined in a provision of the Guam Code Annotated.

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. Amended by P.L. 32-125:2 (Feb. 10, 2014).

2016 NOTE: Subsection/subitem designations added/alterd pursuant to the authority of 1 GCA § 1606.

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

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. Invasion of Privacy or Criminal Voyeurism and Video Voyeurism; Penalty; Definitions.

(a) A person commits a misdemeanor if, except in the execution of a public duty or as authorized by law, the person intentionally or knowingly:

(1) trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place or in a place where an individual has a reasonable expectation of privacy;

(2) peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;

(3) trespasses on property for the sexual gratification of the actor;

(4) installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds

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originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;

(5) intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this Subsection (5) does not apply to:

(A) overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or

(B) interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use;

(6) installs or uses, or both, in any private place or in a place where an individual has a reasonable expectation of privacy, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place, including another person in a stage of undress or sexual activity;

(7) covertly records or broadcasts an image of another person's intimate area underneath clothing, by use of any device, and that image is taken while that person is in a public place and without that person's consent;

(8) divulges, without the consent of the sender or the receiver, the existence or contents of any messages or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted or if the accused learned of the message or photographic image in the course of employment with an agency engaged in transmitting it; or

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(9) knowingly possesses materials created under circumstances prohibited in Subsection (b) below.

(10) This Subsection (a) shall not apply to any dissemination, distribution, or transfer of images subject to this Subsection by an electronic communication service provider or remote storage service in the ordinary course of its business.

(11) In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this Subsection (a).

(b) A person commits a felony in the third degree, if, except in the execution of a public duty or as authorized by law, when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other person, or for the purpose of annoying, harassing or intimidating any other person, the person intentionally or knowingly installs or uses, or both, in any private place or in a place where an individual has a reasonable expectation of privacy, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting another person in a state of undress or sexual activity. The court may order the destruction of any recording made in violation of this Subsection (b).

(c) A person commits the crime of video voyeurism, which is a felony in the second degree, if, except in the execution of a public duty or as authorized by law, when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other persons, or for the purpose of annoying, harassing or intimidating any other person, the person intentionally or knowingly disseminates, publishes or sells any image or images of the intimate areas of another person or persons without the consent of such other person or persons and with knowledge that such image or images were obtained. The

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court may order the destruction of any recording made in violation of this Subsection (c).

(d) Definitions for the purpose of this Section:

(1) broadcast means the electronic transmittal of a visual image with the intent that it be viewed by a person or persons;

(2) disseminate means to make available by any means to any person;

(3) electronic communication means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo optical system;

(4) electronic communication service provider means any person engaged in the offering or sale of electronic communication services to the public;

(5) electronic communication system means any wire, radio, electromagnetic, photo-optical, or photo-electronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications, including e-mail, web hosting, multimedia messaging services, and remote storage services offered by an electronic communication service provider;

(6) imaging device means any instrument capable of recording, storing, viewing or transmitting visual images;

(7) intimate areas means any portion of a person's underwear, pubic area, anus, buttocks, vulva, genitals, or female breast;

(8) intimate areas underneath clothing does not include intimate areas visible through a person's clothing or intimate areas exposed in public;

(9) person means any natural person, corporation, partnership, firm, association, joint venture or any other recognized legal entity or any agent or servant thereof;

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(10) place where a person has a reasonable expectation of privacy means:

(A) a place where a reasonable person would believe that he could undress, be undressed or engage in sexual activity in privacy, without concern that he or she is being viewed, photographed, filmed or otherwise recorded by an imaging device; or

(B) a place where a person might reasonably expect to be safe from casual or hostile surveillance by an imaging device; or

(C) any public place where a person, by taking reasonable steps to conceal intimate areas, should be free from the viewing, recording, storing or transmitting of images obtained by imaging devices designed to overcome the barriers created by a person's covering of intimate areas;

(11) public place means an area generally open to the public, regardless of whether it is privately owned, and includes, but is not limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses, tunnels, buildings, stores, and restaurants;

(12) publish means to:

(A) disseminate with the intent that such image or images be made available by any means to any person; or

(B) disseminate with the intent that such images be sold by another person; or

(C) post, present, display, exhibit, circulate, advertise or allow access by any means so as to make an image or images available to the public; or

(D) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means and to make such image or images available to the public;

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(13) remote storage service means the provision to the public of computer storage or processing services by means of an electronic communication system;

(14) sell means to disseminate to another person, or to publish, in exchange for something of value.

(e) Notwithstanding any law to the contrary, any individual convicted of a criminal offense under this § 28.70 shall be registered on the Crimes Against Minors and Sex Offender Registry in Chapter 89 of Title 9, GCA, as follows: a level three offender for a misdemeanor conviction under this § 28.70; a level two offender for a felony in the third degree conviction under this § 28.70; and a level one offender for a second degree felony under this § 28.70.

SOURCE: G.P.C. §§ 618, 619, 621, 640, 641, See also § 639; *M.P.C. § 250.12; Cal. §§ 1450-1464 (1971); Mass. ch. 272, §§ 13 and 14; N.J. § 2C:33-12. Renumbered as 9 GCA § 70.35 as part of the codification process pursuant to P.L. 15-104:8. See 2014 NOTE preceding Chapter 1, Title 9 GCA. Repealed and reenacted by P.L. 32-144:2 (Apr. 28, 2014). Renumbered to § 28.70 by the Compiler pursuant to the authority of 1 GCA § 1606.

2021 NOTE: This provision, originally entitled “Loitering to Solicit Sexual Contact; Defined and Punished,” was repealed by P.L. 22-158:6 (Dec. 30, 1994).

§ 28.71. Obscene Telephone Service Prohibited; Penalty.

(a) It is unlawful for any telephone subscriber to sell, offer for sale, or transmit over telephone lines any obscene material or message.

(b) Any person in violation of this section is guilty of a misdemeanor.

SOURCE: Added by P.L. 20-167:1 (May 11, 1990) as § 70.40.1. Renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 28.72. Certain Obscene Telephone Communications Prohibited; Penalty.

(a) For purposes of this section and of § 28.71 of this Title 9, the term “obscene” shall mean that:

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(1) The average person, applying contemporary community standards would find that the communication, taken as a whole, appeals to the prurient interest; and

(2) The communication depicts or describes, in a patently offensive way, any act or conduct which constitutes sexual conduct as defined by Chapter 25 of this Title 9; and

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

(b)(1) A subscriber of telephone service who makes any obscene communication by means of a telephone, in person, or through an electronic recording device, in exchange for remuneration is guilty of a misdemeanor, regardless of whether such subscriber placed, initiated or received the telephone call.

(2) A subscriber of telephone service who knowingly permits the use of a telephone or a telephone facility under such subscriber's control to make or to receive, at the request of the subscriber, any obscene communication prohibited under subsection (b)(1) of this section, is guilty of a misdemeanor if the telephone or telephone facility is connected to a local exchange telephone.

(c) For purposes of this subsection, each day of a violation shall constitute a separate offense.

SOURCE: P.L. 20-167:1 (May 11, 1990) § 70.40.2. Renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

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

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

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

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

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

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2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with “Numbers” to “Lowercase Letters” in this section.

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.)

§ 28.90. Obscene, Anonymous, Harassing and Threatening Communications by Computer; Defined and Punished.

(a) It is unlawful for any person, with the intent to harass or abuse another person, to use a computer to:

(1) make contact via the internet with another without disclosing his or her identity with the intent to harass or abuse;

(2) make contact via the internet with a person after being requested by the person to desist from contacting them;

(3) threaten via the internet to commit a crime against any person or property; or cause obscene material to be delivered or transmitted via the internet to a specific person after being requested to desist from sending such material; or

(4) publish via the internet a webpage or posting on a newsgroup untrue statements about another person which are false and designed to entice or encourage other people to ridicule or perpetuate the untruth about that person.

For purposes of this Article and Sections therein, “obscene material” means material that:

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(A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals or sadomasochistic sexual abuse; and

(C) A reasonable person would find, taken as a whole, lacks literary, artistic, political or scientific value.

(b) It is unlawful for any person to knowingly permit a computer under his or her control to be used for any purpose prohibited by this Section.

(c) Any offense committed under this Section may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.

(d) Any person who violates a provision of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000) or imprisoned for not more than one (1) year, or both.

SOURCE: Added by P.L. 31-009:6 (Mar. 9, 2011).

§ 28.100. Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor- Sexting; Crime Defined and Punished.

(a) A minor is guilty of an offense of Illegal Use of a Computer Telecommunications Device Involving a Minor, otherwise known as Sexting, if the minor, by use of a computer or any telecommunications device, recklessly or knowingly creates, receives, exchanges, sends, disseminates, transmits or possesses a photograph, video, depiction or other material that

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shows himself or herself, or of another minor, in a state of nudity.

(b) It is no defense to a charge under this Section that the minor creates, receives, exchanges, sends, or possesses a photograph, video, or other material that shows themselves in a state of nudity.

(c) Applicability. This Section shall not apply to the use of a computer or a telecommunications device to transmit or distribute a photograph or other depiction involving sexual intercourse, deviate sexual intercourse, sadism, masochism or masturbation. This Section does not prohibit a person guilty under this Section to be charged with other chargeable criminal sex offenses under Guam law.

(d) An offense under this Section constitutes a "status offense". Any minor found to commit an offense under this Section shall be found guilty of illegal use of a telecommunications device involving a minor in a state of nudity, a delinquent act that would be a misdemeanor if it could be committed as an adult.

(e) A minor who violates this Section is guilty of a separate offense for each separate photograph, video, or other material that shows a minor in a state of nudity which is created, received, exchanged, sent, or possessed.

(f) Any minor who is convicted of a violation of this Section shall be ordered in addition to the sentence ordered by the Court, as part of his or her sentence, to participate in the educational program similar to that discussed under Subsection (g) of this Section.

(g) A juvenile or minor who commits the offense of Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor- Sexting, may be eligible for a diversionary program.

(1) As used herein, 'eligible offense' means an offense chargeable under this Section where:

(A) the facts of the case involve the creation, exhibition or distribution without malicious intent of a

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photograph depicting nudity as defined in that section through the use of a telecommunications device or a computer; and

(B) the creator and subject of the photograph are juveniles or were juveniles at the time of its making.

(2) The Office of the Attorney General, Family Division, or whichever designated division of the Office of the Attorney General that addresses matters involving juveniles in the community of Guam, will incorporate such a diversionary program under its current services. Such diversionary program would be similar to or incorporated under the current Pre-Adjudicatory Diversionary Program that the Office of the Attorney General currently utilizes. The program would require the Office of the Attorney General to develop an educational program for juveniles who commit an eligible offense as defined in this Act. The Office of the Attorney General shall then consult with the Judiciary of Guam, Juvenile Probation Division, to discuss and implement such educational program, to include the same or similar conditions as the current Pre-Adjudicatory Diversionary Program in place between the Office of the Attorney General and Judiciary of Guam, Juvenile Probation Office. The Office of the Attorney General shall be the sole agency responsible for the determination as to whether a minor may be admitted into the diversionary program. A juvenile who successfully completes the program would have the opportunity to avoid prosecution, and any records relating to such an offense, upon completion of the program, would be dismissed and expunged.

(3) Admission to the program shall be limited to juveniles who:

(A) have not previously been adjudicated delinquent for or convicted of a criminal offense under Title 9 of the Guam Code Annotated that constitutes a third degree felony or greater;

(B) were not aware that their actions could

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constitute and did not have the intent to commit a criminal offense;

(C) may be harmed by the imposition of criminal sanctions; and

(D) would likely be deterred from engaging in similar conduct in the future by completing the program.

(4) The educational program shall provide information concerning:

(A) the legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable local and federal statutes;

(B) the non-legal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;

(C) how the unique characteristics of cyberspace and the Internet, including searchability, replicability, and an infinite audience, can produce long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; and

(D) the connection between bullying and cyberbullying and juveniles sharing sexually suggestive or explicit materials.

(5) The Attorney General may promulgate guidelines to effectuate the provisions of this Section.

SOURCE: Added by P.L. 31-009:7 (Mar. 9, 2011).

§ 28.101. Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor- Sexting; Mandatory Distribution of Information Brochure about Sexting by Retail Stores Who Sell Cellular Telephone Equipment or Cellular Telephone Equipment Service Contracts.

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(a) Definitions. As used in this Section:

(1) Cellular telephone equipment or equipment means a wireless telephone handset used in conjunction with wireless telephone service.

(2) Wireless telephone service means commercial mobile radio service, as defined in Subsection (d) of Section 332 of the Communications Act of 1934 (47 U.S.C. s.332).

(3) Sexting is defined in § 28.100 (a) of Title 9, Guam Code Annotated.

(4) Store or other retail mercantile establishment or store means a place where merchandise is displayed, held, stored or sold or offered to the public for sale on Guam.

(b) It shall be an unlawful practice for any store or other retail mercantile establishment to sell cellular telephone equipment to an individual, or to sell a contract for cellular telephone equipment service to an individual, or to renew a contract for cellular telephone equipment service with an individual, unless the store encloses an informational brochure with such equipment or contract that informs the individual about the dangers of the practice known as sexting.

(1) The informational brochure required pursuant to this Subsection (b) shall include, but not be limited to, an explanation of the types of criminal penalties that may be imposed on an individual who engages in sexting, as well as a list of the names, telephone numbers, and addresses of agencies qualified and available to answer questions related to sexting, such as the Office of the Attorney General, Consumer Protection Division, or any other government or nonprofit organizations that is dedicated to educating communities about safety and self-responsibility when using cellular telephone equipment.

(2) The Office of the Attorney General, Consumer Protection Division, the Guam Police Department, and the Department of Revenue and Taxation shall notify all stores that sell cellular telephone equipment or cellular telephone equipment service contracts, of the requirements of this Act

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by advertising in local newspapers of general circulation on Guam, and shall prepare an information brochure on sexting and make copies available to all such stores.

(3) The Office of the Attorney General shall annually report to *I Liheslatura* on the effectiveness of the brochure preparation and distribution required by this Subsection.

(c) The owners of any store or other retail mercantile establishment which violates Subsection (b) shall be subject to a penalty not to exceed One Thousand Dollars (\$1,000.00) per each violation, and if applicable be subject to the sentence imposed for corporations under § 80.16 of Title 9 G.C.A.

SOURCE: Added by P.L. 31-009:8 (Mar. 9, 2011).

§ 28.102. Unlawful Distribution of Images; Exceptions; Definitions; and Penalties.

(a) It is unlawful for a person to intentionally disclose, or intentionally cause another person to disclose, including disclosing by electronic means, an image of another person who is identifiable from the image itself or from information displayed in connection with the image, or otherwise engaging in revenge pornography, if all of the following apply:

(1) the person in the image is depicted in a state of nudity or is engaged in sexual contact;

(2) the depicted person has a reasonable expectation of privacy. Evidence that a person has sent an image to another person, including through the use of an electronic device, does not, on its own, remove the person's reasonable expectation of privacy for that image; and

(3) the image is disclosed with the intent to harm, harass, intimidate, threaten, or coerce the depicted person.

(b) This Section shall not apply to any of the following:

(1) lawful and common practices of law enforcement;

(2) reporting unlawful activity, or when permitted or required by law or rule in legal proceedings;

(3) lawful and common practices of medical

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treatment;

(4) images involving voluntary exposure in a public or commercial setting;

(5) an interactive computer service, as defined in 47 U.S.C. § 230(f)(2), or an information service, as defined in 47 U.S.C. § 153, with regard to content provided by another person; or

(6) any disclosure that is made with the consent of the person who is depicted in the image.

(c) For this Section's purposes:

(1) Disclose means display, distribute, publish, advertise, or offer.

(2) Disclosing by electronic means means delivery to an e-mail address, mobile device, tablet, other electronic device, or disclosure on a website.

(3) Harm means physical injury, financial injury, or serious emotional distress.

(4) Image means a photograph, videotape, film, or digital recording.

(5) State of nudity means exposure of the naked genitals, pubic area, buttocks, or female nipple.

(6) Sexual contact means sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex.

(7) Reasonable expectation of privacy means the person exhibits an actual expectation of privacy and the expectation is reasonable.

(d) Notwithstanding any law to the contrary, any individual convicted under this § 28.102 shall be sentenced as follows: (1) a person convicted of a first offense under this § 28.102 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000) or imprisoned for not more than one (1) year, or both; and (2) a person convicted of a second offense and any offense

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thereafter under this § 28.102 shall be guilty of a third degree felony.

SOURCE: Added by P.L. 33-171 (June 30, 2016).

CROSS-REFERENCE: 9 GCA § 25.10(a)(8); 10 GCA § 122331(e)(5).
