

Public Law 22-020

Bill No. 244 (LS)

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AN ACT TO ADD A NEW CHAPTER 18, TO BE KNOWN AS THE "SAFE STREETS ACT", TO TITLE 16, GUAM CODE ANNOTATED, TO DEFINE DRIVING OFFENSES INVOLVING ALCOHOL AND CONTROLLED SUBSTANCES, TO PROVIDE FOR THE SUSPENSION OR REVOCATION OF DRIVERS' LICENSES FOR SUCH OFFENSES, TO PROVIDE FOR PEDESTRIAN AND VEHICLE SAFETY ON THE HIGHWAYS AND ROADWAYS OF GUAM; TO AMEND §3110, TITLE 16, GUAM CODE ANNOTATED, ON PENALTIES FOR DRIVING WITH A SUSPENDED LICENSE; TO ADD §3109.1 TO SAID TITLE ON PUNISHMENT FOR THE MISUSE OF A DRIVER'S LICENSE; TO AMEND §3101 OF SAID TITLE ON DRIVERS EDUCATION; TO ADD §3113 TO SAID TITLE ON PRIVATE DRIVERS EDUCATION; TO TRANSFER FUNDS TO FUND A HIGHWAY HAZARDS STUDY; AND TO AUTHORIZE AN EXCHANGE OF LAND IN IJA, INARAJAN.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Legislative statement. In recent years, traffic accidents involving motorists driving under the influence of alcohol have risen alarmingly despite previous legislative efforts to curb the problem. The Legislature finds that a revised implied consent law and tougher penalties are needed. This Act shall be called the "Safe Streets Act."

Section 2. A new Chapter 18 is hereby added to Title 16, Guam Code Annotated, to read:

**"CHAPTER 18
ARTICLE 1
OFFENSES INVOLVING ALCOHOL AND
CONTROLLED SUBSTANCES**

§18101. Definitions. As used in this Chapter:

- (a) *Driving under the influence ("DUI") or while intoxicated* means any person driving a vehicle under the influence of an alcoholic beverage or a controlled substance or a combination thereof, when as a result of consuming such alcoholic beverage or controlled substance or the combination thereof, his or her physical or mental abilities are impaired to such a degree that he or she no longer has the ability to drive a vehicle with the caution characteristics of a sober person of ordinary prudence, under the same or similar circumstance, and includes any person operating or in actual physical control of a motor

vehicle who has eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood.

- (b) *Percent of alcohol by weight* shall be based upon grams of alcohol per one hundred (100) milliliters of blood.
- (c) *Prior offense of driving under the influence* includes a conviction based on drunk driving laws in effect prior to enactment of this Chapter, or under drunk driving laws in any other jurisdiction in the world if the offense upon which the conviction is based would, if committed in Guam, be a violation of §18102 of this Chapter.
- (d) *Controlled substances* means those so defined by Chapter 67, Title 9, Guam Code Annotated⁷ the Uniform Controlled Dangerous Substances Act.
- (e) *Vehicular homicide* means a person who does any act forbidden by law in the driving of a vehicle or who negligently drives a vehicle, which act or negligence proximately causes death to any person other than the driver.
- (f) *Vehicular homicide while intoxicated* means a person, while driving a vehicle under the influence does any act forbidden by law in the driving of the vehicle or if he or she negligently drives a vehicle, which act or negligence proximately causes death to any person other than the driver.
- (g) *Negligence* means the failure to use the ordinary or reasonable care which a person of ordinary prudence would use in order to avoid injury to himself or others under similar circumstances.
- (h) *Reasonable cause* means such a state of facts as would lead a person of ordinary care and prudence to believe and conscientiously entertain honest and strong suspicion that the person driving or in control of a vehicle is under the influence of alcohol or of a controlled substance or of a combination.

§18102. Influence of alcohol and controlled substances; causing bodily injury to person other than driver; alcoholic content in blood; proof.

- (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any controlled substance, or under the combined influence of an alcoholic beverage and any controlled substance, to operate or be in physical control of a motor vehicle.
- (b) It is unlawful for any person, while having eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood to operate or be in physical control of a motor vehicle.
- (c) It is unlawful for any person, while under the influence of an alcoholic beverage or any controlled substance, or under the combined influence of an alcoholic beverage and any controlled substance, to operate or be in physical control of a motor vehicle and, when doing so, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle or who negligently drives a vehicle, which act or neglect or negligence proximately causes bodily injury to any person other than the driver.
- (d) It is unlawful for any person, while having eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood to operate or be in physical control of a motor vehicle and, when doing so, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.
- (e) In any prosecution under this section, it is a rebuttable presumption that the person with eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood at the time of operating or in actual physical control of a motor vehicle is under the influence of alcohol if the person had eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood at the time of the performance of a blood or breath test within three (3) hours after the driving.
- (f) In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this title was violated.
- (g)
 - (1) Notwithstanding the other provisions of this section, a person under the age of eighteen (18) shall be guilty of a violation of subsections (b) or (d) of this section

if such person shall be found within three (3) hours of his or her arrest for a violation of this section to have four one-hundredths of one percent (0.04%) or more, by weight, of alcohol in his or her blood.

- (2) A person convicted for the first time of a violation of item (1) of this subsection shall be guilty of a misdemeanor and shall have his or her license or permit to operate a motor vehicle suspended for six (6) months. Upon any subsequent conviction of the person while under the age of eighteen (18), the person's license or permit to operate a motor vehicle shall be suspended for one (1) year with no exception for occupational driving privileges. Upon any conviction the court shall notify the Department of Revenue and Taxation of such suspension of the person's privilege to drive and confiscate the person's license or permit to operate a motor vehicle. In addition to the required mandatory suspension of a person's license or permit to operate a motor vehicle, the court may impose such additional penalty as may be permitted by law for conviction of a misdemeanor.

§18103. Driving while intoxicated; presumptions.

- (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving or being in actual physical control of a vehicle while under the influence of an alcoholic beverage in violation of subsections (b) or (d) of §18102 of this Chapter, the amount of alcohol in the person's blood at the time of the test as shown by an analysis of that person's blood or breath shall give rise to the following presumptions affecting the burden of proof
 - (1) If there was at that time less than eight one-hundredths of one percent (0.08%) by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.
 - (2) If there was at that time eight one-hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.
- (b) Before such presumptions are made in cases involving a breath test, the prosecuting attorney must show the following by a preponderance of the evidence
 - (1) That the instrument used for the test was properly checked and in proper working order at the time of conducting the test;
 - (2) That any chemicals employed in the test were of the correct kind and compounded in the proper proportions;
 - (3) That the person had nothing in his mouth at the time of the test and that he had taken no food or drink within fifteen (15) minutes prior to taking the test;
 - (4) That the test was given by a qualified operator and in the proper manner.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

§18104. Conviction of first violation of §18102; punishment.

- (a) If any person is convicted of a first violation of §18102 of this Chapter, that person shall be guilty of a misdemeanor and shall be punished by imprisonment in the custody of the Department of Corrections ("DOC") or the Guam Police Department ("GPD") for not less than a mandatory forty-eight (48) hours nor more than one (1) year and a fine of not less than One Thousand Dollars (\$1,000) nor more than Five Thousand Dollars (\$5,000). In addition, the judge may impose any additional penalties, including requiring the offenders to pay restitution to persons injured or for property damaged.

- (b) The court may order that any person punished under this section, who is to be punished by imprisonment by DOC or GPD, be imprisoned on days other than days of regular employment of the person, as determined by the court.
- (c) Any person who has been granted probation under the conditions of §18301 of this Chapter, may, after six (6) months have elapsed since the commencement of participation in the treatment program, petition the court to have the restriction on that person's privilege to operate a motor vehicle removed, and the court may, for good cause shown, order the Department of Revenue and Taxation to remove the restrictions upon a showing that the person has successfully participated in the treatment program and complied with the terms and conditions of probation, has given proof of insurance, and has made a showing to the court that there is little likelihood of a repeat offense.
- (d) The court shall suspend and confiscate the person's operator's or chauffeur's license or permit and shall notify the Department of Revenue and Taxation that the privilege to operate a motor vehicle of a person punished under this section has been suspended for six (6) months.

§18105. Second conviction of §18102; punishment. If any person is convicted of a violation of §18102 of this Chapter and the offense occurred within five (5) years of a separate conviction of a violation of said §18102 or of conviction of a prior offense as defined in §18101(c) of this Chapter, that person shall be guilty of a misdemeanor and shall be punished by imprisonment in the custody of DOC or GPD for not less than a mandatory seven (7) days nor more than two (2) years and by a fine of not less than Two Thousand Dollars (\$2,000) nor more than Five Thousand Dollars (\$5,000). The person's privilege to operate a motor vehicle shall be suspended for one (1) year, with no exceptions for occupational driving privileges, by the Department of Revenue and Taxation pursuant to §18124 of this Chapter.

§18106. Conviction of violation of §18102 within five years after two violations; punishment. (a) If any person is convicted of a violation of §18102 of this Chapter and the offense occurred within five (5) years of two (2) separate convictions of a violation of said §18102 or of two (2) separate convictions of a prior offense as defined in §18101(c) of this Chapter, or any combination thereof resulting in two (2) or more prior convictions, that person shall be guilty of a felony of the third degree and shall be punished by imprisonment in the custody of DOC or GPD for not less than a mandatory ninety (90) days and not more than five (5) years and by a fine of not less than Three Thousand Dollars (\$3,000) nor more than Five Thousand Dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Revenue and Taxation pursuant to §18201 of this Chapter for a period of not less than two (2) years.

§18107. Conviction of violation of §18102 within five years of three or more violations of designated sections; punishment. If any person is convicted of a violation of §18102 of this Chapter and the offense occurred within five (5) years of three (3) or more separate convictions of a violation of said §18102 or of three (3) or more separate convictions of a prior offense as defined in §18101(c) of this Chapter, or any combination thereof resulting in three (3) or more prior convictions, that person shall be punished by imprisonment in the custody of DOC or GPD for not less than a mandatory one (1) year nor more than six (6) years, and by a fine of not less than Four Thousand Dollars (\$4,000) nor more than Seven Thousand Dollars (\$7,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Revenue and Taxation pursuant to §18201 of this Chapter for a period of not less than five (5) years.

§18108. Forfeiture of vehicle. Any person convicted of violating the provisions of §18102 of this Chapter three (3) or more times, as provided in §18107 of this Chapter, shall forfeit the vehicle in which the third offense, or more, was committed. However, in those cases where there is a showing of extreme circumstances or where the vehicle is owned by a person other than the person convicted of three (3) or more violations of said §18102, and the owner had no knowledge that the vehicle would be driven by an intoxicated person and that the driver had been

convicted of prior violations of said §18102, the court, instead of ordering the forfeiture of the vehicle, shall suspend the convicted person's driving privilege for a minimum period of five (5) years, and no limited privilege to operate a motor vehicle shall be granted. At the time of arrest for an offense under said §18102, the vehicle in which the offense was committed shall be impounded by the GPD and released only upon the approval of the Prosecution Division of the Attorney General's Office when it is determined that the vehicle is not subject to forfeiture under this section. The seizure and forfeiture of the vehicle shall be enforced by the GPD and the vehicle shall be disposed of in accordance with those provisions of law relating to assets forfeiture by public sale or auction at such times as the GPD may choose to conduct such sale or auction. The Chief of Police of the GPD shall convey clear title as owner of said confiscated vehicles, subject to any perfected security interests in said vehicles.

§18109. Conviction involving a child. Notwithstanding any other provision of law, a person convicted of a violation of §18102 of this Chapter shall be guilty of a felony of the third degree if at the time of his or her arrest the person was operating a vehicle in which a child under the age of sixteen (16) was a passenger or if a child under the age of sixteen (16) was injured as a result of an accident in which the vehicle operated by the person was involved.

§18110. Vehicular negligence; injury to person other than driver. In addition to any other penalty imposed by the court, if any person is convicted of a violation of §18102 of this Chapter and the offense causes bodily injury to any person other than the driver, such person shall be guilty of vehicular negligence which is a felony of the third degree.

§18111. Vehicular homicide; classified.

- (a) A person is guilty of vehicular homicide if, while driving a vehicle, he or she does any act forbidden by law in the driving of the vehicle or if he or she negligently drives a vehicle, which act or negligence proximately causes death to any person other than himself or herself. As allowed in §4.45 of Title 9, Guam Code Annotated, in proving that the person did any act forbidden by law, it shall not be necessary to prove that the person possessed a culpable mental state. Vehicular homicide is a felony of the second degree and shall be punishable by imprisonment in the custody of DOC and GPD for up to eight (8) years.
- (b) A person is guilty of vehicular homicide while intoxicated if, while driving a vehicle in violation of §18102 of this Chapter, he or she does any act forbidden by law in the operating or driving of the vehicle or if he or she negligently operates or drives a vehicle, which act or negligence proximately causes death to any person other than himself or herself. As allowed in §4.45 of Title 9, Guam Code Annotated, in proving that the person did any act forbidden by law, it shall not be necessary to prove that the person possessed a culpable mental state. Vehicular homicide while intoxicated is a felony of the second degree and shall be punishable by imprisonment in the custody of DOC or GPD for not less than a mandatory five (5) years, and up to fifteen (15) years.

§18112. Impoundment of vehicle of registered owner convicted or charged of violation of §18102; prior offenses; considerations; exemption. The interest of any owner of a motor vehicle which has been used in the commission of a violation of §18102 of this Chapter for which the owner was convicted, is subject to impoundment as provided in this section. Upon conviction the court may order the vehicle impounded by GPD or its authorized agent at such locations as shall be designated by the Chief of Police at the owner's expense for not less than one (1) day nor more than thirty (30) days. For purposes of section, "owner of a motor vehicle" includes the registered owners, legal owner, or the lessee of said vehicle at the time of the offense.

If the offense occurred within five (5) years of a prior conviction of a violation of §18102 of this Chapter or of a prior offense as defined in §18101(c) of this Chapter, the prior conviction shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a

jury trial or by the court upon a court trial, the court, except in an unusual case where the interests of justice would best be served by not ordering impoundment, shall order the vehicle impounded at the owner's expense for not less than thirty (30) or more than ninety (90) days.

For purposes of this section the court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, impair the ability of the offender or the offender's family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. When no impoundment is ordered in an unusual case pursuant to this section, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

§18113. Charging a violation of §18102 after convictions of violations of §18102; effect of prior convictions on sentencing and driving privilege.

- (a) In any case charging a violation of §18102 of this Chapter and the offense occurred within five (5) years of one (1) or more separate convictions of a violation of said §18102 or of prior offenses as defined in §18101(c) of this Chapter, the court shall not strike any separate conviction of those offenses for purposes of sentencing in order to avoid imposing as part of the sentence or term of probation, the minimum time of imprisonment and the minimum fine, as provided in this chapter, or for purposes of avoiding revocation, suspension, or restriction of the privilege to operate a motor vehicle, as provided in this Chapter.
- (b) In any case charging a violation of §18102 of this Chapter, the court shall obtain a copy of the driving record of the person charged from the Department of Revenue and Taxation and may obtain any records or any other source to determine if one (1) or more convictions have occurred within five (5) years of the charged offense.
- (c) If any separate convictions of violations of §18102 of this Chapter or of said prior offenses, are reported to have occurred within five (5) years of the charged offense, the court shall notify each court where any of the separate convictions occurred for the purpose of enforcing terms and conditions of probation pursuant to Article 3 of this Chapter.

§18114. Use of controlled substance as defense to violations. The fact that any person charged with driving under the influence of alcohol or any controlled substance or a combination thereof, in violation of §18102 of this Chapter, is or has been entitled to use a controlled substance shall not constitute a defense against any violation of said §18102.

§18115. Participation in driver improvement or treatment programs; no suspension or stay of proceedings prior to acquittal or conviction of violations of §18102; effect after conviction and sentencing.

- (a) In any case in which a person is charged with a violation of §18102 of this Chapter, prior to acquittal or conviction, the court shall not suspend or stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates during that suspension, in any one (1) or more education, training, or treatment programs, including, but not limited to, a driving improvement program, a treatment program for persons who are habitual users of alcohol or other alcoholism program, a program designed to offer alcohol service to problem drinkers, an alcohol or drug education program, or a treatment program for persons who are habitual users of controlled substances or other drug-related program.
- (b) This section shall not apply to any attendance or participation in any education, training, or treatment programs after conviction and sentencing, including attendance or participation in any of those programs as a condition of probation granted after conviction when permitted pursuant to this article.

- (c) The court may at its discretion allow credit for therapeutic treatment.

§18116. Restriction on privilege to operate motor vehicles; markings on licenses and records; removal of restriction; notice and recordation of probation.

- (a) If a person's privilege to operate a motor vehicle is restricted by a court pursuant to this Chapter, the court shall issue an occupational driving permit in a form designed by the Division of Motor Vehicle, Department of Revenue and Taxation. The permit shall be displayed in the rear window of any vehicle driven by the motorist granted limited driving privileges. The court shall promptly notify the Department of Revenue and Taxation (the "Department") of the terms of the restriction in a manner prescribed by the Department. The clerk of court shall punch a hole in the lower right hand side of the person's license, indicating a restriction. The Department shall place that restriction on the person's records in the Department and enter the restriction on any license subsequently issued by the Department to that person during the period of the restriction. If the person removes the permit or fails to produce the punched license, he or she shall be guilty of a felony of the third degree.
- (b) The cost of the permit shall be borne by the person whose privilege to operate a motor vehicle is restricted.
- (c) If the court removes a restriction before the end of the previously specified term pursuant to §18110 of this Chapter, the court shall so mark the person's driver's license in a manner prescribed by the Department and promptly notify the Department of the removal of the restriction.
- (d) If a person is placed on probation pursuant to this Chapter, the court shall promptly notify the Department of the probation and probationary term and conditions in a manner prescribed by the Department. The Department shall place the fact of probation and the probationary term and conditions on the person's record in the Department.
- (e) If a person's privilege to operate a motor vehicle is required or ordered to be suspended or revoked by the Department pursuant to other provisions of this title upon the conviction of an offense under this Chapter, at the time for sentencing, that person shall be present in court and each and every operator's license of that person shall be surrendered to the court where the Clerk of Court shall punch a hole in such license.
- (f) Upon such person completing his or her sentence for such conviction, the court shall transmit the license or licenses to the Department for reissuance if such person passes the drivers license examination given by the Department.

§18117. Separate conviction; challenge to constitutional validity; use in judicial or administrative proceedings. Only one (1) challenge shall be permitted to the constitutionality of a separate conviction of a violation of §18102 of this Chapter, which was entered in a separate proceeding to declare a separate judgment of conviction constitutionally invalid. A determination by the court that the separate conviction is constitutional precludes any subsequent attack on constitutional grounds in a subsequent prosecution in which the same separate conviction is charged. Any determination that a separate conviction is unconstitutional precludes any allegation or use of that separate conviction in any judicial or administrative proceeding, and the Department shall strike that separate conviction from its records. Pursuant to §18124 of this Chapter, the court shall report to the Department any determination upholding a conviction on constitutional grounds and any determination that a conviction is unconstitutional.

This §18117 shall not preclude a subsequent challenge to a conviction if, at a later time, a subsequent statute or appellate court decision having retroactive application affords any new basis to challenge the constitutionality of the conviction.

§18118. Dismissal of allegation of violation of §18102 of this Chapter; substitution of lesser offense or dismissal or striking of separate conviction; reasons by court and prosecution. When an allegation of a violation of §18102 of this Chapter is dismissed by the court, an allegation of a different or lesser offense is substituted for an allegation of a violation of said

§18102, or an allegation of a separate conviction is dismissed or stricken, the court shall specify on the record its reason or reasons for the order. The court shall also specify on the record whether the dismissal, substitution, or striking was requested by the prosecution and whether the prosecution concurred in or opposed the dismissal, substitution, or striking.

When the prosecution makes a motion for a dismissal or substitution, or for the striking of a separate conviction, the prosecution shall submit a written statement which shall become part of the court records and which gives the specific reasons for the motion. The reasons shall include, but need not be limited to, problems of proof, the interests of justice, why another offense is more properly charged, if applicable, and any other pertinent reasons. If the reasons include the "interests of justice", the written statement shall specify all of the factors which contributed to this conclusion.

§18119. Drinking while driving a motor vehicle upon any highway. No person shall drink any alcoholic beverage or consume a controlled substance while driving a motor vehicle upon any highway. The penalties for violation of this §18119 shall be the same as the first offense in §18104 of this Chapter.

§18120. Drinking in motor vehicle upon highway. Any person who drinks any alcoholic beverage or consumes a controlled substance while in a motor vehicle upon a highway shall be guilty of a misdemeanor.

§18121. Possession of opened container in a motor vehicle. Any person who has in his or her possession on his or her person, while in a motor vehicle upon a highway, any bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed shall be guilty of a misdemeanor.

§18122. Storage of opened container. A person shall be guilty of a misdemeanor if he or she is the registered owner of any motor vehicle, or the driver if the registered owner is not then present in the vehicle, keeps in a motor vehicle, when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, unless the container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section shall not apply to the living quarters of a housecar or camper.

§18123. Suspension of driver's license. The Department shall immediately suspend or revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of §18102 of this Chapter. For purposes of this section, suspension or revocation shall be as follows:

- (1) **Violation of §18102; first offense.** Upon a conviction of a violation of §18102 of this Chapter, the privilege to operate a motor vehicle shall be suspended for a period of six (6) months and restricted during this period to travel to and from that person's place of employment and to and from the program described in §18115(b) of this Chapter. The clerk of court shall take possession of the driver's license and mutilate it by punching a hole in the lower right hand corner. The Department shall issue a restricted license if the license expires during the suspension. The restricted license shall also contain a hole punched in the lower right hand corner.
- (2) **Violation of §18102; second offense within five years of conviction of §18102.** Upon conviction or finding of a violation of §18102 of this Chapter within five (5) years of a conviction of said §18102 or of a prior offense as defined in §18101(c) of this Chapter, the privilege to operate a motor vehicle shall be suspended for a period of one (1) year with no exceptions for occupational

privileges or travelling to and from the program described in §18116(b). The clerk of court shall take possession of the person's driver's license and shall notify the Department of the revocation.

- (3) **Violation of §18102 within five years after three violations of §18102.** If any person is convicted of a violation of §18102 of this Chapter and the offense occurred within five (5) years of three (3) or more separate convictions of a violation of said §18102 or of prior offenses as defined in §18101(c) of this Chapter, or any combination thereof, that person's driving privileges shall be revoked by the Department for a period of not less than five (5) years.

§18124. Restriction or suspension of driving privilege; probation with conditions; revocation of license.

- (a) **Unless** ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the Department shall not suspend, pursuant to paragraph (2) of §18123 of this Chapter, but shall suspend for one (1) year and, thereafter, restrict for two (2) additional years the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated §18102 of this Chapter, but only if the court has certified to the Department that the court has granted probation to the person on conditions which include the conditions specified in §18301 of this Chapter and the court has restricted the privilege to operate a motor vehicle as provided in that section.
- (b) **Unless** ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the Department shall not revoke, pursuant to paragraph (2) of said §18123, but shall revoke for five (5) years, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated said §18102, but only if the court has certified to the Department that the court has granted probation to the person on conditions which include the conditions specified in said §18301, and the court has ordered the Department to suspend the privilege to operate a motor vehicle as provided in that section.
- (c) The restriction of the driving privilege under subsections (a) and (b) of this §18124 shall become effective thirty (30) days from the date on which the person consented to participate in the program specified in said §18301, excluding any time or imprisonment ordered by the court, but only if the person presents evidence satisfactory to the Department that he or she is participating in the program specified in said §18301 and pays fees to the Department of Fifteen Dollars (\$15) upon application for the restricted license and Twenty Dollars (\$20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to apply for a restricted license or if the person fails to show evidence of participation within thirty (30) days, excluding the time of imprisonment ordered by the court, the Department shall suspend the driving privilege of the person for eighteen (18) months.
- (d) The driving privilege restricted under subsections (a) or (b) of this §18124 shall be limited to the hours for driving to and from the place of employment and during the course of employment and driving to and from activities required in an alcohol treatment program specified in said §18301. The Department may set out the times and days of restricted operation established by the court either on a special restricted license or upon the usual license form. The restriction shall continue in full force and effect until the person presents evidence satisfactory to the Department that the person has completed the alcohol treatment program.
- (e) All abstracts of record showing a conviction that are forwarded to the Department shall state whether the court has granted probation to the person on conditions which include the conditions specified in said §18301 and state the date on which the person consented to participate in the program.

ARTICLE 2
IMPLIED CONSENT AND SUSPENSION OR
REVOCAION OF DRIVING PRIVILEGES AND LICENSE

§18201. Implied consent of driver of motor vehicle to submit to blood, or breath testing to determine alcohol or controlled substances content of blood.

- (a) Any person who operates a motor vehicle on the public highways or roadways of Guam shall be deemed to have given consent to a blood or breath test for the purpose of determining the alcohol or controlled substance content of the person's blood.
- (b) The blood or breath tests shall be administered at the request of the peace officer having reasonable cause to believe the person driving or in actual physical control of a motor vehicle upon the public highways or roadways is under the influence of alcohol or controlled substances only after (1) a lawful arrest, and (2) the person has been informed by a peace officer of the sanctions that may result from his or her refusal to be tested.
- (c) If there is probable cause to believe that a person is in violation of §18102 of this Chapter, then the person shall have the option of using a blood or breath test for the purpose of determining the alcohol or controlled substance content of that person's blood.
- (d) No person, other than a physician, registered nurse, or person licensed in a clinical laboratory, may withdraw blood for the purpose of determining the alcohol or controlled substance content thereof. This limitation shall not be apply to the taking of a breath specimen.
- (e) The implied consent of a person to be tested shall not be withdrawn by reason of the person's being dead, unconscious or in any other state which renders the person incapable of consenting or refusing to be tested. In such event, a test of the person's blood shall be administered.
- (f) If a person under arrest refuses to submit to a breath or blood test, none shall be given. The person shall be warned, however, that his or her failure to be tested may be used in evidence against him or her in any charge arising from the arrest

§18202. Sanctions for refusal to submit to or failure to complete a blood, or breath test. If any person refuses the officer's request to submit to, or fails to complete a blood or breath test or tests, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of §18102 of this Chapter and that the person had refused to submit to, or did not complete, the blood or breath tests after being requested by the officer, then the Department of Revenue and Taxation (the "Department") shall (1) suspend the person's privilege to operate a motor vehicle for a period of six (6) months, or (2) revoke the person's privilege to operate a motor vehicle for a period of two (2) years if the person has been convicted of a separate violation of §§18102 or 18202 of this Chapter or any prior offense of driving under the influence violation, or any combination thereof, within five (5) years of the date of the refusal, or (3) revoke the person's privilege to operate a motor vehicle for a period of three (3) years if the person has been convicted of two (2) or more separate violations of §§18102 and 18202 of this Chapter or of any prior offense of driving under the influence, or any combination thereof, within five (5) years of the date of the refusal.

§18203. Administrative revocation or suspension of driving privilege and license procedures.

- (a) If a person is arrested for a violation of §18102 of this Chapter, on a determination by the arresting officer that there was reasonable cause to stop the motor vehicle, or that the motor vehicle was stopped at an intoxication control roadblock and there was probable cause to believe that the arrested was driving, operating, or in actual physical control of the motor vehicle while under the influence of alcohol, or a controlled substance, then (1) the arresting officer shall inform the person that he or she has the option to take a breath test or a blood test, and (2) the arresting officer shall also inform

the person of the sanctions under this Chapter, including the sanction for refusing to take a breath or a blood test.

- (b) The peace officer's sworn statement or affidavit shall within three (3) working days of the arrest be submitted to the Department on a form furnished or approved by the Department.
- (c) Upon receipt of the peace officer's sworn statement, the Department shall within five (5) working days notify the person in writing of the action taken.
- (d) Within fifteen (15) working days from the date of receipt of the notice from the Department, the person may request in writing a hearing on a form provided by the Department in its notice of the action taken.
- (e) The Department shall within ten (10) working days of receipt of the person's written request for a hearing conduct such hearing.
- (f) The scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been operating or driving or in actual physical control of a motor vehicle in violation of §18102 of this Chapter, whether the person was placed under arrest, whether the person refused to submit to, or did not complete the blood or breath test after being requested by a peace officer, and whether the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the blood or breath test.
- (g) At the commencement of any such hearing, the person who is alleged to have refused to submit to testing shall surrender to the Department any license or permit issued in the name of the person which authorizes the person to drive or be in control of a vehicle and which license or permit was not previously suspended or revoked.
- (h) If the person establishes by a preponderance of the evidence that he or she did not refuse to submit to the required test or that he or she was not driving or in actual physical control of a motor vehicle, the Department shall return his or her license or permit.
- (i) Within ten (10) working days of the commencement of the hearing, the Department shall render a decision to suspend or revoke the driving privilege and driver's license or permit, or dismiss the action. The person shall be notified of the decision.
- (j) If the Department determines, upon a hearing of the matter, to suspend or revoke the affected person's privilege to operate a motor vehicle, the suspension or revocation decision shall become effective within ten (10) working days after certified mailing of notice to the person by the Department.
- (k) If the Department's decision is to revoke or suspend the person's privilege to drive, the person may file for **de novo** judicial review within ten (10) working days after the decision is mailed.
 - (1) The filing of the petition shall not operate as a stay of the administrative revocation or suspension nor shall the court stay the administrative revocation or suspension pending the outcome of the judicial review.
 - (2) The petition shall state with specificity the grounds upon which the petitioner seeks reversal of the administrative revocation.
 - (3) The court shall schedule the judicial review as soon as practicable, and the review shall be on the record of the administrative hearing without taking additional testimony or evidence.
 - (4) If the petitioner fails to appear without just cause, the court shall affirm the administrative revocation or suspension.
 - (5) The sole issues before the court shall be whether the Department exceeded constitutional or statutory authority, erroneously interpreted the law, acted in an arbitrary or capricious manner, committed an abuse of discretion, or made a determination that is unsupported by the evidence in the record.
 - (6) Unless the administrative revocation or suspension is reversed, the revocation or suspension shall become effective as set out in subsection (j) of this §18203.

- (l) Failure of the peace officer or the Department to comply with the requirements in subsections (a), (b), (c), (e) or (i) of this §18203 shall result in a dismissal of the action in favor of the person.
- (m) Failure of the person to comply with subsections (d), (h) and (k) of this §18203 shall be deemed a waiver of the rights therein, and the revocation or suspension if supported by the affidavit shall become effective pursuant to §§18202 and 18203 of this Chapter.

§18204. Suspension; refusal under implied consent law; time to run consecutively with other restrictions, suspensions or revocations.

- (a) The purpose of this §18204 is to require that any suspension or revocation under §18123 of this Chapter and any restriction, suspension or revocation under §§18201 or 18124 of this Chapter resulting from the same arrest are cumulative and shall be imposed consecutively, if so ordered by the court.
- (b) If
 - (1) an abstract of conviction is received by the Department for an offense which requires the Department to restrict, suspend, or revoke the driving privilege of a person after conviction or finding of a violation pursuant to §§18201 or 18202 of this Chapter, and
 - (2) there is a suspension of that person's driving privilege already in effect for refusal to consent to, or for failure to complete, a blood or breath test pursuant to said §18201, and
 - (3) that suspension is administratively final and resulted from the same arrest, and
 - (4) the sentencing court orders these restrictions, suspensions, revocations, or combination thereof to run consecutively, then the restriction, suspension, or revocation resulting from the conviction or finding pursuant to §18123 or §18124 of this Chapter shall commence after the suspension already in effect pursuant to said §18201 has terminated.

§18205. Filing of rules. The Department shall file with the Legislative Secretary additional rules, regulations and procedures for implied consent and administrative hearings in accordance with the Administrative Adjudication Law within ninety (90) days of enactment of this Chapter.

**ARTICLE 3
PROBATION AND GENERAL CONSIDERATIONS
OF PROBATION**

§18301. Conditions of probation for violation of §18102.

- (a) If the court grants probation to any person punished under §18102 of this Chapter, including any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to the following:
 - (1) That the driver shall participate in, and successfully complete an alcohol or drug education program, or both of these programs as designated by the court.
 - (2) That the person be referred to a qualified substance abuse counselor for an assessment of the person's alcohol dependence and need for treatment.
 - (3) That the counselor shall submit a report with recommendations to the court, which may require the person to obtain appropriate treatment.
 - (4) That all costs for such assessment or treatment or both shall be borne by the penalized person at the discretion of the court.

§18302. Probation granted under §18102; failure to comply with terms and conditions; revocation or termination; procedure.

- (a) If any person has been granted probation under the conditions of §18301 of this Chapter and fails at any time to participate successfully in the treatment program designated by the court, then the court shall revoke or terminate the probation, and the court may revoke or terminate the probation if the person fails to comply with any other term or

condition of probation, and the court shall proceed under either of the following provisions

- (1) Revoke the suspension of sentence and order the Department to suspend the person's privilege to operate a motor vehicle from the date of the order revoking or terminating probation.
- (2) Grant a new term of probation on the condition that the person be placed in the custody by DOC or GPD for at least thirty (30) days and order the Department to suspend the person's privilege to operate a motor vehicle from the date of the new grant of probation.

§18303. General probation conditions.

- (a) If any person is convicted of a violation of §18102 of this Chapter, the court shall not stay or suspend pronouncement of sentencing and shall pronounce sentence in conjunction with the conviction in a reasonable time, including time for receipt of any pre-sentence investigation report.
- (b) If any person is convicted of a violation of §18102 of this Chapter and is granted probation, the terms and conditions of probation shall include, but not be limited to the following:
 - (1) A period of probation not less than two (2) years if it is a misdemeanor and not less than five (5) years if it is a felony.
 - (2) A requirement that the person shall not consume alcohol or any controlled substances or any combination thereof not prescribed by a medical doctor.
 - (3) A requirement that the person, if arrested for a violation of §18102 of this Chapter, shall not refuse to submit to a blood or breath test for the purpose of determining the alcohol or controlled substance content of his or her blood.
 - (4) A requirement that the person shall not commit any criminal offense.
 - (5) A requirement that the person be referred to a qualified substance abuse counselor for an assessment of the person's alcohol dependency and need for treatment."

Section 3. Section 3110 of Title 16, Guam Code Annotated, is amended to read:

"§3110. Same Penalty. Any person who knowingly drives a motor vehicle upon a highway at any time when his operator's or chauffeur's license or driving privilege is suspended or revoked, or when a license to drive a motor vehicle has been refused is guilty of a misdemeanor for a first offense and of a felony of the third degree for subsequent offenses."

Section 4. Section 3109.1 is added to Title 16, Guam Code Annotated, to read:

"§3109.1. Punishments. Any person who violates the provisions of subsections (a) or (e) of §3109 of this Title shall be guilty of a misdemeanor. Any person who violates the provisions of subsections (b), (c), (d), (f), (g) or (h) of said §3109 shall be guilty of a felony of the third degree."

Section 5. Repealer.

- (a) **Except** for pending charges as provided in paragraph (b) of this section, §§9104, 9105 and 9106 of Title 16, Guam Code Annotated, and §23404 and subsection (a) of §23100 of Title XXIV, Government Code, are hereby repealed.
- (b) The repeal of the sections and subsection set out in paragraph (a) of this section shall not be effective as to any charge that has been brought against any person prior to the effective date of this Act, and as to such charges, the prosecution of such persons shall continue as if such sections and subsection were in full force and effect. The intent of this paragraph is that no person shall be exonerated of a pending charge as a result of the adoption of this Act nor shall any person be subject to a more stringent penalty than would have been the case under the law as it existed at the time that such person was arrested.

Section 6. Report on costs. Within thirty (30) days of enactment of this Act, the Director of Revenue and Taxation and Director of Corrections shall transmit to the Legislature cost estimates for additional resources which may be necessary to effectuate the provisions of this Act.

Section 7. Study of hazardous highways. The Office of Highway Safety of the Department of Public Works, in concert with the Guam Police Department and the Guam Power Authority shall identify highways and roadways upon which motor vehicle and pedestrian traffic is deemed hazardous. Within one hundred and eighty (180) days, the Office of Highway Safety shall proceed with and submit to the Legislature a report of such identified areas and make recommendations centering on traffic and pedestrian safety in such areas. Such report shall include costs for development, construction, or purchase of traffic and pedestrian safety instruments and measures.

Section 8. Transfer of funds. The Governor of Guam shall exercise his transfer authority by transferring One Hundred Fifty Thousand Dollars (\$150,000) to the Department of Public Work's Office of Highway Safety to carry out the purposes set forth in Section 7 of this Act, to immediately erect water bumpers or sand bumpers on concrete poles deemed hazardous under said Section 7, and to create a public awareness program to inform the public about the general provisions of this Safe Streets Act.

Section 9. Drivers education.

- (a) **Legislative findings and intent.** The Legislature finds that the number of automobile deaths on Guam is a tragedy of enormous proportions which may be alleviated to some extent by insuring that Guam's young people and those adults unfamiliar with the rules of the road are properly trained in the art of safe driving, automobile courtesy and hazard avoidance. At the present time such young people are given the privilege of becoming licensed drivers at the age of sixteen (16) even if they have no knowledge of safe driving skills. This is not conducive to the development of the practices and habits which can make the island's highways safer places. Additionally, adults may become drivers simply by passing basic driving tests without full knowledge of the hazards of driving on Guam. It is therefore the intent of the Legislature to insure that all persons, including those under eighteen (18) years of age, have an opportunity to receive the proper training before they can obtain a driver's license.
- (b) **Implementation of drivers education.** The Territorial Board of Education shall require the Director of Education (the "Director") to implement drivers education courses at all public high schools, effective with the 1993-1994 school year. The successful completion of such a course shall result in the issuance of a valid Certificate of Completion of a drivers education program as required by subsection 12 of §3101 (e), Title 16, Guam Code Annotated. A breakdown of the costs involved and the additional level of funding necessary to implement this program shall be submitted by the Director to the Legislature no later than thirty (30) days after the enactment of this Act.
- (c) **Drivers education for adults.** The Board of Trustees of the Guam Community College ("GCC") shall direct the President of GCC to design curriculum and course work for a drivers education program for individuals applying for a new Guam drivers license who are not in possession of a valid Certificate of Completion of a drivers education program as required by said subsection 12. GCC is hereby authorized to set fees as necessary to recover the full cost of the program; **provided**, that such fees shall be commensurate with the normal tuition and fees charged for other adult education courses offered by GCC. A breakdown of the costs involved and the additional level of funding necessary to implement this program shall be submitted by the President of the Legislature no later than thirty (30) days after the enactment of this Act.
- (d) **Amendment re Certificate of Completion.** Subsection 12 of §3101 (e) of Title 16, Guam Code Annotated, is amended to read:

"(12) a valid Certificate of Completion of a drivers education course by the applicant, if the applicant is applying for a license for the first time or if the applicant is under eighteen (18) years of age, and any other information necessary to determine whether the applicant is entitled to a license under this Title."

- (e) **Amendment re drivers under eighteen.** Subsection 1 of §3101 (h) of Title 16, Guam Code Annotated, is amended to read:

"(1) Who is not of legal age to receive such license or permit. An applicant for a new operator's license or instruction permit must (i) have a valid Certificate of Completion of a drivers education course and (ii) be at least eighteen (18) years of age, whether applying for a new license or for renewal of an existing license, or if under eighteen (18) must be at least sixteen (16) years of age and have the consent in writing of his parents or guardians to drive a motor vehicle. An applicant for a chauffeur's license must be at least eighteen (18) years of age and if the application is for a new license and not a renewal, must have a valid Certificate of Completion."

- (f) **Private drivers education.** A new §3113 is added to Title 16, Guam Code Annotated, to read:

"§3113. **Private drivers education services.** The Director of Revenue and Taxation shall develop rules and regulations under the provisions of the Administrative Adjudication Law relative to licensing private drivers education services and authorizing such licensed service firm to issue valid Certificates of Completion."

- (g) **Effective date of certain subsections.** The provisions contained in subsections (d), (e) and (f) of this section shall take effect on January 1, 1994.

Section 10. Exchange of land.

- (a) **Legislative statement.** Benny San Nicolas and Peter San Nicolas have requested the Legislature to exchange a portion of their property situated in **Ija**, Municipality of Inarajan, for government-owned property, in order to give the government of Guam public easements of ingress and egress and utility rights-of-way into the proposed **Ija**, Inarajan Subdivision.
- (b) **Land exchange authorized.** The Governor of Guam is hereby authorized to exchange six thousand (6,000) square meters of government of Guam property for that portion of basic Lot No. 56-R8 entitled Lot No. 56-9-R/W, **Ija**, Inarajan, in order to establish a public access and utility right-of-way easement fifty feet (50") wide. Such easement, which consists of 2,766+ square meters, shall lead to Government of Guam Tract No. 3734, Block 12, as shown on Instrument No. 47184, Office of the Recorder, Guam.

Section 11. Severability. If any of the provisions of this Act or the application thereof to any person or circumstance are held invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.