

I Mina'Trentai Kuåttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
203-34 (LS)	Therese M. Terlaje	AN ACT TO AMEND AND MOVE CHAPTER 18, TITLE 16, GUAM CODE ANNOTATED TO CHAPTER 92, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE SAFE STREETS ACT OF 2017.	10/27/17 11:52 a.m.						

I MINA 'TRENTAI KUATTRO NA LIHESLATURANGUÅHAN
2017 (FIRST) Regular Session

Bill No. 203-34(LS)

Introduced by:

Therese M. Terlaje

AN ACT TO AMEND AND MOVE CHAPTER 18, TITLE 16,
GUAM CODE ANNOTATED TO CHAPTER 92, TITLE 9,
GUAM CODE ANNOTATED, RELATIVE TO THE SAFE
STREETS ACT OF 2017

2017 OCT 27 AM 11:52

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. It is the intent of *I Liheslatura* to amend the 1996 enactment of Guam's drunk and drugged driving statute, known as the Safe Streets Act, to improve Guam's enforcement of those laws, and to further improve the criminal justice response to arrests and prosecution in line with theories of therapeutic jurisprudence, rehabilitation of persons addicted to alcohol and drugs, and immediate accountability. The Legislature supports the efforts of the Judiciary of Guam in the continued operation of therapeutic courts such as Adult Drug Court, Juvenile Drug Court, Family Violence Court, Mental Health Court, Veterans Court, and the Driving While Impaired Treatment Court.

Section 2. A new subsection (d) is *added* to §2101, Chapter 2, Title 7, Guam Code Annotated to read as follows:

"(d) DWI Treatment Court. The Supreme Court of Guam may establish a Driving While Impaired Treatment Court (DWI Treatment Court). Participation in the Driving While Impaired Treatment Court shall be limited to

1 those defendants who meet the legal and clinical requirements in accordance with
2 orders as promulgated by the Supreme Court of Guam.”

3 **Section 3.** Chapter 18, Title 16, Guam Code Annotated is hereby
4 *amended and moved* to Chapter 92, Title 9, Guam Annotated Code, to read as
5 follows:

6 ~~“CHAPTER 18~~

7 ~~—SAFE STREETS ACT CHAPTER 92~~

8 **SAFE STREETS ACT OF 2017**

9 Article 1. Offenses Involving Alcohol and Controlled Substances.

10 Article 2. Implied Consent and Suspension or Revocation of Driving.

11 Article 3. Probation and General Considerations of Probation.

12 Article 4. Ignition Interlock Devices.

13
14 **ARTICLE 1**

15 **OFFENSES INVOLVING ALCOHOL AND**

16 **CONTROLLED SUBSTANCES**

17 ~~§ 18101~~ 92101. Definitions.

18 ~~§ 18102~~ 92102. ~~Influence of Alcohol and Controlled Substances; Causing~~
19 ~~Bodily Injury to Person Other Than Driver; Alcoholic~~
20 ~~Content in Blood; Proof~~ Driving While Impaired.

21 ~~§ 18103~~ 92103. Reckless Driving While Intoxicated; Presumptions
22 Impaired.

23 ~~§ 18104~~ 92104. First Offender Conviction; ~~of First Violation of § 18102;~~
24 Punishment.

25 ~~§ 18105~~ 92105. Second Offender Conviction; ~~of § 18102;~~ Punishment.

26 ~~§ 18106~~ 92106. Third Offender Conviction ~~of Violation of § 18102 Within~~
27 ~~Five Years After Two Violations;~~ Felony Punishment.

1 § ~~18107~~ 92107. Fourth Offender Conviction of Violation of § 18102
2 Within Five Years of Three or More Violations of
3 Designated Sections;: Felony Punishment.

4 § ~~18108~~ 92108. Forfeiture of Vehicle Vehicular Negligence: Bodily
5 Injuries.

6 § ~~18109~~ 92109. Conviction Involving a Driving While Impaired With
7 Child On Board: Felony Punishment.

8 § ~~18110~~ Vehicular Negligence; Third Degree Felony

9 § ~~18111~~ 92110. Vehicular Homicide; Classified: Felony Punishment.

10 § ~~18112~~. Impoundment of Vehicle of Registered Owner Convicted or
11 Charged of Violation of § 18102; Prior Offenses; Considerations;
12 Exemption.

13 § ~~18113~~. Charging a Violation of § 18102 After Convictions of Violations
14 of § 18102; Effect of Prior Convictions on Sentencing and
15 Driving Privilege.

16 § ~~18114~~. Use of Controlled Substance as Defense to Violations.

17 § ~~18115~~. Participation in Driver Improvement or Treatment Programs; No
18 Suspension or Stay of Proceedings Prior to Acquittal or
19 Conviction of Violations of § 18102; Effect After Conviction and
20 Sentencing.

21 § ~~18116~~. Restriction on Privilege to Operate Motor Vehicles; Markings on
22 Licenses and Records; Removal of Restriction; Notice and
23 Recordation of Probation.

24 § ~~18117~~. Separate Conviction; Challenge to Constitutional Validity; Use in
25 Judicial or Administrative Proceedings.

~~§ 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.~~

~~§ 18119~~ 92112. Drinking While Driving a Motor Vehicle Upon Any
Highway: Petty Misdemeanor: Punishment.

~~§ 18120~~ 92113. Drinking While Riding in a Motor Vehicle: Petty
Misdemeanor: Punishment.

~~§ 18121~~ 92114. Possession of Opened Container in a Motor Vehicle of
Alcohol: Petty Misdemeanor: Punishment.

§ 92115. Marijuana Use While Driving a Motor Vehicle: Petty
Misdemeanor: Punishment.

§ 92116. Exceptions for Alcohol Use in Tour Buses and Limousines.

§ 92117. Occupational Driving Permit: First Offender Only.

~~§ 18122. Storage of Opened Container.~~

~~§ 18123~~ 92118. Suspension or Revocation of Driver's License: Process.

~~§ 18124. Restriction or Suspension of Driving Privilege; Probation with
Conditions; Revocation of License.~~

~~§ 18124.1~~ 92119. Driving While License Suspended or Revoked For
Driving While Impaired.

§ 92120. Participation in the Driving While Impaired Treatment Court.

§ 92121. Dismissal for Completion of Driving While Impaired Treatment
Court; Permitted.

§ 92122. No Conditional Discharge and Dismissal Permitted for Offenses
Involving Serious Injuries.

§ 92123. Probation Allowed. Any person convicted under this Chapter

~~§ 18125~~ 92124. Safe Street Fund.

§ 92125. Electronic Alcohol Monitoring Device, Rules and Regulations.

1 § 92126. Presumptions Affecting the Burden of Proof: Defenses.

2
3 ~~§ 18101~~ **§ 92101. Definitions.**

4 As used in this Chapter:

5 (a) Alcohol means a colorless, volatile, flammable liquid synthesized
6 or obtained by fermentation of sugars and starches and widely used, either
7 pure or denatured, as a solvent and in drugs; an intoxicating beverage with
8 the same characteristics.

9 (b) Bodily Injury carries the same meaning for bodily injury as
10 defined in 9 GCA §16.10(b).

11 (c) Breath Alcohol Ignition Interlock Device (BAIID) means a device
12 that attaches to a vehicle and prevents its starting unless a breath alcohol test
13 is passed.

14 (d) Bus means a vehicle chartered for transportation of persons for
15 hire. It shall not mean a school bus, open vehicles resembling trolleys, or a
16 vehicle operated pursuant to a public or private franchise operating over a
17 regularly scheduled route.

18 (e) Controlled Substance is as defined in Chapter 67 of the Uniform
19 Controlled Substance Act.

20 (f) ~~Driving under the influence ("DUI") or while intoxicated~~ While
21 Impaired, or While Driving Impaired ("DWT") means any person driving a
22 motor vehicle under the influence of an alcoholic beverage alcohol, or a the
23 ingestion or administration of any controlled substance, or a any
24 combination thereof of these, when as a result of consuming such alcoholic
25 beverage or controlled substance or the combination thereof, his or her, his
26 physical or mental abilities are impaired to such a degree that he or she no
27 longer has the ability to drive a motor vehicle with the caution

1 characteristics of a sober person of ordinary prudence, under the same or
2 similar ~~circumstance, and includes any circumstances.~~

3 (g) Electronic Alcohol Monitoring Device means a portable device
4 capable of automatically and periodically testing and recording alcohol
5 consumption levels and automatically and periodically transmitting such
6 information and tamper attempts regarding such device, regardless of the
7 location of the person operating or in actual physical being monitored.

8 (h) Oral Fluid (Saliva) Test means a method used to collect a saliva
9 sample from a test subject and analyze it for the presence of hormones,
10 drugs, antibodies or other molecules.

11 (i) Limousine means a chauffeur-driven motor vehicle, other than a
12 bus or taxicab, designed and used for transportation of persons for
13 compensation.

14 (j) Officer means an officer of the Guam Police Department, or a law
15 enforcement officer of the Guam Airport Authority or Guam Port Authority,
16 but only while such law enforcement officer is carrying out his duties within
17 the confines of the property under the control of a motor vehicle who has
18 eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol
19 in his or her blood and jurisdiction of the Authority by which the law
20 enforcement officer is employed.

21 ~~(k)~~ Percent of alcohol by weight shall be based upon grams of
22 alcohol per one hundred (100) milliliters of blood, or grams of alcohol per
23 210 liters of breath.

24 ~~(e)(l)~~ Physical control of a vehicle means being physically present in
25 the driver's seat of a motor vehicle while the engine is turned on, whether
26 moving or stationary on a public highway, a shoulder adjacent to a public
27 highway, or parked in any public area.

1 ~~(m) Prior offense of driving under the influence includes a conviction~~
2 ~~for driving while impaired, means a conviction of an offense in violation of~~
3 ~~any Section of this Chapter, or an offense based on drunk the driving while~~
4 ~~impaired laws in effect prior to the enactment of this Chapter, or under~~
5 ~~drunk-driving while impaired laws in of any other jurisdiction in the world if~~
6 ~~the offense upon which the conviction is based would, if committed in on~~
7 ~~Guam, be a violation of § 18102 of this Chapter.~~

8 ~~(d) Controlled substances means those so defined by Chapter 67, Title~~
9 ~~9, Guam Code Annotated the Uniform Controlled Dangerous Substances~~
10 ~~Act.~~

11 ~~(e) Vehicular homicide means a person who does any act forbidden by~~
12 ~~law in the driving of a vehicle or who negligently drives a vehicle, which act~~
13 ~~or negligence proximately causes death to any person other than the driver.~~

14 ~~(f) Vehicular homicide while intoxicated means a person, while~~
15 ~~driving a vehicle under the influence does any act forbidden by law in the~~
16 ~~driving of the vehicle or if he or she negligently drives a vehicle, which act~~
17 ~~or negligence proximately causes death to any person other than the driver.~~

18 ~~(g) Negligence means the failure to use the ordinary or reasonable~~
19 ~~care which a person of ordinary prudence would use in order to avoid injury~~
20 ~~to himself or others under similar circumstances.~~

21 ~~(h) Reasonable cause means such a state of facts as would lead a~~
22 ~~person of ordinary care and prudence to believe and conscientiously~~
23 ~~entertain an honest strong suspicion that the person driving and in physical~~
24 ~~control of a vehicle is under the influence of alcohol or of a controlled~~
25 ~~substance or of a combination thereof.~~

26 ~~(i) Working day means any day of the week other than Saturday or~~
27 ~~Sunday or a legal holiday.~~

1 (n) Public highway means any primary or secondary roadway, street
2 or alley used by the general public, including a public easement.

3 (o) Serious Bodily Injury carries the same meaning for serious bodily
4 injury as defined in 9 GCA §16.10(c).

5 (p) Suspended driver's license means an operator's license,
6 chauffeur's license, or driving privilege that has been suspended by the
7 Court, or by administrative action, or seized by an officer pursuant to law.

8 ~~§ 18102~~ **92102. Influence of Alcohol and Controlled Substances;**
9 ~~**Causeing Bodily Injury to Person Other Than Driver; Alcoholic Content**~~
10 ~~**in Blood; Proof**~~ **Driving While Impaired.**

11 ~~(a) It is unlawful for any a person, while under the influence of an~~
12 ~~alcoholic beverage or any controlled substance, or under the combined~~
13 ~~influence of an alcoholic beverage and any controlled substance, to operate~~
14 ~~to drive, operate, or be in physical control of a any motor vehicle. within the~~
15 ~~territory:~~

16 ~~(b) It is unlawful for any person, while having eight one hundredths~~

17 ~~a) While under the influence of one alcohol;~~

18 ~~b) While under the influence of a controlled substance;~~

19 ~~c) Having an alcohol concentrate of 0.08 percent (0.08%), or more, by~~
20 ~~weight, of alcohol in his or her blood to operate or be in physical control of a~~
21 ~~motor vehicle.~~

22 ~~(c) It is unlawful for any person, while under the influence of an~~
23 ~~alcoholic beverage or any controlled substance, or under the combined~~
24 ~~influence of an alcoholic beverage and any controlled substance, to operate~~
25 ~~or be in physical control of a motor vehicle and, when doing so, do any act~~
26 ~~forbidden blood, as shown by law or neglect any duty imposed by law in the~~
27 ~~driving of the vehicle or who negligently drives a vehicle, which act or~~

1 ~~neglect or negligence proximately causes bodily injury to any person other~~
2 ~~than the driver. a chemical analysis of such person's breath or blood~~
3 ~~administered as authorized by this Chapter;~~

4 (d) ~~It is unlawful for any person, while having eight one hundredths of~~
5 ~~one percent (0.08%) or more, by weight, of alcohol in his or her blood to~~
6 ~~operate or be in physical control of a motor vehicle and, when doing so, do~~
7 ~~any act forbidden by law or neglect any duty imposed by law in the driving~~
8 ~~of the vehicle, which act or neglect proximately causes bodily injury to any~~
9 ~~person other than the driver.~~

10 (e) ~~In any prosecution under this Section, it is a rebuttable~~
11 ~~presumption that the person with eight one hundredths of one percent~~
12 ~~(0.08%) or more, by weight, of alcohol in his or her blood at the time of~~
13 ~~operating or in actual physical control of a motor vehicle is under the~~
14 ~~influence of alcohol if the person had eight one hundredths of one percent~~
15 ~~(0.08%) Having an alcohol concentrate of 0.04 percent, or more, by weight,~~
16 ~~of alcohol in his or her blood at the time of the performance of a blood or~~
17 ~~breath test within three (3) hours after the driving.~~

18 (f) ~~In proving the person neglected any duty imposed by law in the~~
19 ~~driving of the vehicle, it is not necessary to prove that any specific section of~~
20 ~~this title was violated.~~

21 (g) ~~(1) Notwithstanding the other provisions of this Section, the blood~~
22 ~~of a person under the age of twenty-one (21) years shall be guilty of a~~
23 ~~violation of Subsections (b) or (d) of this Section if such person shall be~~
24 ~~found within three (3) hours of his or her arrest for a violation of this Section~~
25 ~~to have four one hundredths of one percent (0.04%) or more, by weight, of~~
26 ~~alcohol in his or her blood.~~

1 ~~(2) A person convicted for the first time of a violation of item (1) of~~
2 ~~this Subsection shall be guilty of a misdemeanor and shall have his or her~~
3 ~~license or permit to operate a motor vehicle suspended for six (6) months.~~
4 ~~Upon any subsequent conviction of the person while under the age of~~
5 ~~twenty one (21) years, the person's license or permit to operate a motor~~
6 ~~vehicle shall be suspended for one (1) year with no exception for~~
7 ~~occupational driving privileges. Upon any conviction the Court shall notify~~
8 ~~the Department of Revenue and Taxation), as shown by a chemical analysis~~
9 ~~of such suspension of the person's privilege to drive and confiscate the~~
10 ~~person's license or permit to operate a motor vehicle. In addition to the~~
11 ~~required mandatory suspension of a person's license or permit to operate a~~
12 ~~motor vehicle, the Court may impose such additional penalty as may be~~
13 ~~permitted by law for conviction of a misdemeanor. person's breath or blood~~
14 ~~administered as authorized by this Chapter;~~

15 e) Having any level of a controlled substance in his or her blood or
16 urine,

17 f) Having inhaled, ingested, applied or otherwise used any chemical,
18 poison or organic solvent, or any compound, or combination of any of these,
19 when as a result, his physical or mental abilities are impaired to such a
20 degree that he no longer has the ability to drive a motor vehicle with the
21 characteristics of a sober person of ordinary prudence under the same or
22 similar circumstances;

23 g) While under the influence of any combination of subsections (a)
24 through (g).

25 **§ 18103 92103. Reckless Driving While Intoxicated; Presumptions**
26 **Impaired.**

1 ~~(a) Upon the trial of any criminal action, or preliminary proceeding in~~
2 ~~a criminal action, arising out of acts alleged to have been committed by any~~
3 ~~person while driving or being in actual physical control of a vehicle while~~
4 ~~under the influence of an alcoholic beverage in violation of subsections (b)~~
5 ~~or (d) of § 18102 of this Chapter, the amount of alcohol in the person's blood~~
6 ~~at the time of the test as shown by an analysis of that person's blood or~~
7 ~~breath shall give rise to the following presumptions affecting the burden of~~
8 ~~proof~~

9 ~~(1) If there was at that time less than eight one hundredths of one~~
10 ~~percent (0.08%) by weight of alcohol in the person's blood, that fact shall~~
11 ~~not give rise to any presumption that the person was or was not under the~~
12 ~~influence of an alcoholic beverage, but the fact may be considered with other~~
13 ~~competent evidence in determining whether the person was under the~~
14 ~~influence of an alcoholic beverage at the time of the alleged offense.~~

15 ~~(2) If there was at that time eight one hundredths of one percent~~
16 ~~(0.08%) or more by weight of alcohol in the person's blood, it shall be~~
17 ~~presumed that the person was under the influence of an alcoholic beverage at~~
18 ~~the time of the alleged offense. Any person who, in reckless disregard for the~~
19 ~~safety of persons or property, operates a motor vehicle while driving~~
20 ~~impaired shall be guilty of a petty misdemeanor, and shall not be considered~~
21 ~~a prior conviction under § 92102.~~

22 ~~(b) Before such presumptions are made in cases involving a breath~~
23 ~~test, the prosecuting attorney must show the following by a preponderance~~
24 ~~of the evidence~~

25 ~~(1) That the instrument used for the test was properly checked~~
26 ~~and in proper working order at the time of conducting the test;~~

1 (2) That any chemicals employed in the test were of the correct
2 kind and compounded in the proper proportions;

3 (3) That the person had nothing in his mouth at the time of the
4 test and that he had taken no food or drink within fifteen (15) minutes
5 prior to taking the test;

6 (4) That the test was given by a qualified operator and in the
7 proper manner.

8 The provisions of this subsection shall not be construed as limiting the
9 introduction of any other competent evidence bearing upon the question
10 whether the person ingested any alcoholic beverage or was under the
11 influence of an alcoholic beverage at the time of the alleged offense. If the
12 People agree to a plea of guilty or nolo contendere to a charge of a violation
13 of this Section in satisfaction of, or as a substitute for, an original charge of a
14 violation of § 92102, the People shall state for the record a factual basis for
15 the satisfaction or substitution, including whether or not the defendant was
16 driving while impaired in connection with the offense.

17 (c) The court shall notify the Department of Revenue and Taxation of
18 each conviction of this Section.

19 (d) A defendant placed on probation for a conviction under this
20 Section shall enroll in an alcohol or drug education program at the expense
21 of the participant, and complete the same as a condition of probation.

22 **§ 18104 92104. First Offender Conviction of First Violation of § 18102;:**
23 **Punishment.**

24 (a) If any A person is convicted of a first violation of § 18102 of this
25 Chapter, that person shall be driving while impaired is guilty of a
26 misdemeanor, and shall be punished by imprisonment in the custody of the

1 Department of Corrections ("DOC") or the Guam Police Department
2 ("GPD") ~~for not sentenced as follows:~~

3 (a) A term of incarceration not less than a mandatory forty-eight (48)
4 hours, nor more than one (1) year and a

5 (b) A mandatory minimum fine of not less than One Thousand Three
6 Hundred Fifty Dollars (\$1,000350.00) and ~~not~~ more than Five One
7 Thousand Dollars (\$5,0001,000). ~~In addition, the judge may impose any~~
8 ~~additional penalties, including requiring the offenders to pay restitution to~~
9 ~~persons injured or for property damaged.~~

10 (b) ~~The court may order that any person punished under this section,~~
11 ~~who is to be punished by imprisonment by DOC or GPD, be imprisoned on~~
12 ~~days other than days of regular employment of the person, as determined by~~
13 ~~the court.~~

14 (c) ~~Any person who has been granted probation under the conditions~~
15 ~~of § 18301 of this Chapter, may, after six (6) months have elapsed since the~~
16 ~~commencement of participation in the treatment program, petition the court~~
17 ~~to have the restriction on that person's privilege to operate a motor vehicle~~
18 ~~removed, and the court may, for good cause shown, order the Department of~~
19 ~~Revenue and Taxation to remove the restrictions upon a showing that the~~
20 ~~person has successfully participated in the treatment program and complied~~
21 ~~with the terms and conditions of probation, has given proof of insurance, and~~
22 ~~has made a showing to the court that there is little likelihood of a repeat~~
23 ~~offense. The Court shall order the person to be placed on probation for not~~
24 ~~more than one (1) year.~~

25 (d) ~~The court shall suspend and confiscate the person's operator's or~~
26 ~~chauffeur's license or permit and Suspension of a person's driving privilege~~
27 ~~for six (6) months, with occupational driving privileges. The Court may~~

1 modify this suspension prior to the end of six (6) months suspension
2 provided the person can show proof that he or she has successfully
3 completed a drug and alcohol treatment program acceptable to the Court.

4 (e) The Court shall notify the Department of Revenue and Taxation
5 that the privilege to operate a motor vehicle of a person punished under this
6 section has been suspended for six (6) months of each conviction of this
7 Section.

8 **§ 18105-92105. Second Offender Conviction of § 18102; Punishment.**

9 If any A person is convicted of a second violation of ~~§ 18102 of this~~
10 ~~Chapter~~ driving while impaired, and the offense occurred within five (5)
11 years of a ~~separate prior~~ conviction of a violation of said § 18102 or of
12 conviction of a prior for such an offense as defined in §18101(c) of this
13 ~~Chapter, that person shall be,~~ is guilty of a misdemeanor and shall be
14 ~~punished by imprisonment in the custody of DOC or GPD for~~ sentenced as
15 follows:

16 (a) A term of incarceration of not less than a mandatory seven (7)
17 days, nor more than two (2) years and by a one (1) year;

18 (b) A mandatory minimum fine of not less than ~~Two~~ One Thousand
19 Dollars (\$~~21~~,000) ~~not~~, and not more than Five Thousand Dollars (\$5,000).

20 (c) The person's Court shall order the person to be placed on probation
21 for not more than three (3) years.

22 (d) Suspension of a person's driving privilege ~~to operate a motor~~
23 ~~vehicle shall be suspended for one (1) year, with no exceptions for~~
24 occupational driving privileges, which time period may be reduced at the
25 discretion of the Court provided on motion by the defendant that he has: 1)
26 completed Court approved treatment; 2) paid all fines and fees; 3) has not
27 been charged with a subsequent criminal offense; and 4) the Probation

1 officer recommends reduction based on satisfactory performance. The Court
2 may further reduce the period of suspension by no more than fifty percent
3 (50%) provided the defendant agrees to have installed either a breath alcohol
4 ignition interlock device (BAIID) as ordered by the Court, or an electronic
5 alcohol monitoring device approved by the Court.

6 (e) The Court shall notify the Department of Revenue and Taxation
7 pursuant to § 18124 of each conviction of this Chapter Section.

8 **§ 18106 92106. Third Offender Conviction of Violation of § 18102**
9 **Within Five Years After Two Violations;: Felony Punishment.**

10 (a) If any A person is convicted of a third violation of § 18102 of this
11 Chapter driving while impaired, and the offense occurred within five (5)
12 years of two (2) separate prior convictions of a violation of said § 18102 or
13 of two (2) separate convictions of a prior for such an offense as defined in §
14 18101(c) of this Chapter, or any combination thereof resulting in two (2) or
15 more prior convictions, that person shall be, is guilty of a felony of the third
16 degree and, notwithstanding any other provision of law, shall be punished by
17 imprisonment in the custody of DOC or GPD for sentenced as follows:

18 (a) A term of incarceration of not less than a mandatory of
19 ninety (90) days and not more than five (5) years and by a, nor more
20 than five (5) years; provided, however, if the defendant agrees to
21 voluntarily participate in, and successfully complete all terms and
22 conditions of the DWI Court Treatment Program, the Court may
23 reduce the mandatory incarceration time from ninety (90) days to no
24 less than thirty (30) days, otherwise the defendant shall serve the full
25 ninety (90) days.

1 (b) A mandatory fine of not less than Three Two Five Hundred
2 Thousand Dollars (\$3,0002,500), ~~nor~~ and not more than Five
3 Thousand Dollars (\$5,000).

4 (c) The Revocation of a person's driving privilege to operate a
5 motor vehicle shall be revoked by the for not less than two (2) years,
6 which time period may be reduced at the discretion of the Court
7 provided on motion by the defendant that he has 1) completed Court
8 approved treatment; 2) paid all fines and fees; 3) has not been charged
9 with a subsequent criminal offense; and 4) the Probation officer
10 recommends reduction based on satisfactory performance. The Court
11 may further reduce the period of suspension by no more than fifty
12 percent (50%) provided the defendant agrees to have installed either a
13 breath alcohol ignition interlock device (BAIID) as ordered by the
14 Court, or an electronic alcohol monitoring device approved by the
15 Court.

16 (d) The Court shall order the person to be placed on probation
17 for not less than three (3) years, and not more than five (5) years.

18 (e) The Court shall notify the Department of Revenue and
19 Taxation pursuant to § 18201 of this Chapter for a period of not less
20 than two (2) years of each conviction of this Section.

21 **§ 18107 92107. Fourth Offender Conviction of Violation of § 18102**
22 **Within Five Years of Three or More Violations of Designated Sections;**
23 **Felony Punishment.**

24 If any A person is convicted of a fourth violation of § 18102 of this
25 Chapter driving while impaired, and the offense occurred within five seven
26 (57) years of three (3) or more separate prior convictions for driving while
27 under the influence, is guilty of a violation of said § 18102 or of three (3) or

1 ~~more separate convictions of a prior offense as defined in § 18101(c) of this~~
2 ~~Chapter, or any combination thereof resulting in three (3) or more prior~~
3 ~~convictions, that person~~ felony of the third degree, and notwithstanding any
4 other provision of law, shall be punished by imprisonment in the custody of
5 DOC or GPD for sentenced as follows:

6 (a) A term of incarceration of not less than a minimum
7 mandatory one (1) year, nor more than six (6) years, and by a. A
8 mandatory minimum fine of not less than Four Three Thousand
9 Dollars (\$4,0003,000), nor and not more than Seven Thousand Dollars
10 (\$7,000).

11 (b) The Revocation of a person's driving privilege to operate a
12 motor vehicle shall be revoked by for not less than three (3) years,
13 which time period may be reduced in the discretion of the Court
14 provided on motion by the defendant he has 1) completed Court
15 approved treatment; 2) paid all fines and fees; 3) has not been charged
16 with a subsequent criminal offense; and 4) the Probation officer
17 recommends reduction based on satisfactory performance. The Court
18 may further reduce the period of suspension by no more than fifty
19 percent (50%) provided the defendant agrees to have installed either a
20 breath alcohol ignition interlock device (BAIID) as ordered by the
21 Court, or an electronic alcohol monitoring device approved by the
22 Court.

23 (c) The Court shall order the person to be placed on probation
24 for not less than four (4) years, and not more than six (6) years.

25 (d) The Court shall notify the Department of Revenue and
26 Taxation pursuant to § 18201 of this Chapter for a period of not less
27 than five (5) years each conviction of this Section.

1 **§ 18108 92108. Forfeiture of Vehicle Vehicular Negligence: Bodily**
2 **Injuries.**

3 ~~Any person convicted of violating the provisions of § 18102 of this~~
4 ~~Chapter three (3) or more times, as provided in § 18107 of this Chapter,~~
5 ~~shall forfeit the vehicle in which the third offense, or more, was committed.~~
6 ~~However, in those cases where there is a showing of extreme circumstances,~~
7 ~~or where the vehicle is owned by a person other than the person convicted of~~
8 ~~three (3) or more violations of said § 18102, and the owner had no~~
9 ~~knowledge that the vehicle would be driven by an intoxicated person and~~
10 ~~that the driver had been convicted of prior violations of said § 18102, the~~
11 ~~Court, instead of ordering the forfeiture of the vehicle, shall suspend the~~
12 ~~convicted person's driving privilege for a minimum period of five (5) years,~~
13 ~~and no limited privilege to operate a motor vehicle shall be granted.~~

14 ~~At the time of arrest for an offense under said § 18102, the vehicle in~~
15 ~~which the offense was committed shall be impounded by GPD and released~~
16 ~~only upon the approval of the Prosecution Division of the Attorney General's~~
17 ~~Office when it is determined that the vehicle is not subject to forfeiture~~
18 ~~under this Section. The seizure and forfeiture of the vehicle shall be enforced~~
19 ~~by the GPD and the vehicle shall be disposed of in accordance with those~~
20 ~~provisions of law relating to assets forfeiture by public sale or auction at~~
21 ~~such times as GPD may choose to conduct such sale or auction.~~

22 ~~The profits made from such sale or auction shall be deposited in the~~
23 ~~Special Assets Forfeiture Fund, under the Local Assets Forfeiture Account.~~
24 ~~The Chief of Police of GPD shall convey clear title as owner of said~~
25 ~~confiscated vehicles, subject to any perfected security interests in said~~
26 ~~vehicles.~~

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

5 (a) It is unlawful for any person to operate or be in physical control of
6 a motor vehicle while driving impaired and, when doing so, do any act
7 forbidden by law or neglect any duty imposed by law in the driving of the
8 vehicle, or who negligently drives a vehicle, which act or neglect or
9 negligence proximately causes bodily injury to any person other than the
10 driver.

11 (b) It is unlawful for any person to operate or be in physical control of
12 a motor vehicle while having 0.08 percent or more, by weight, of alcohol in
13 his or her blood and, when doing so, do any act forbidden by law or neglect
14 any duty imposed by law in the driving of the vehicle, or who negligently
15 drives a vehicle, which act or neglect or negligence proximately causes
16 bodily injury to any person other than the driver.

17 (c) It is unlawful for any person under the age of twenty-one (21)
18 years to operate or be in physical control of a motor vehicle if such person is
19 found to have 0.04 percent or more, by weight, of alcohol in his or her
20 breath or blood, when doing so, do any act forbidden by law or neglect any
21 duty imposed by law in the driving of the vehicle, or who negligently drives
22 a vehicle, which act or neglect or negligence proximately causes bodily
23 injury to any person other than the driver.

24 (d) Any violation of subsection (a), (b) or (c) shall be punished as a
25 felony of the third degree, and notwithstanding any other provision of law,
26 shall be sentenced as follows:

1 1. A term of incarceration of up to three (3) years for a first
2 conviction under this Chapter, and up to five (5) years in the event of
3 a prior conviction of driving while impaired.

4 2. A mandatory fine of not less than two thousand five hundred
5 (\$2,500.) dollars, and not more than five thousand (\$5,000.) dollars.

6 3. The Court shall order the person to be placed on probation
7 for not more than five (5) years.

8 4. Suspension of a person's driving privilege for not more than
9 five (5) years, which time period may be reduced in the discretion of
10 the Court provided on motion by the defendant he has 1) completed
11 Court approved treatment; 2) paid all fines and fees; 3) has not been
12 charged with a subsequent criminal offense; and 4) the Probation
13 officer recommends reduction based on satisfactory performance. The
14 Court may further reduce the period of suspension by no more than
15 fifty percent (50%) provided the defendant agrees to have installed
16 either a breath alcohol ignition interlock device (BAIID) as ordered by
17 the Court, or an electronic alcohol monitoring device approved by the
18 Court.

19 5. The Court shall notify the Department of Revenue and
20 Taxation of each conviction of this Section.

21 (e) In proving the person neglected any duty imposed by law in
22 driving the vehicle, it is not necessary to prove that any specific section of
23 this code was violated.

24 **§ 18109 92109. Conviction Involving a Driving While Impaired With**
25 **Child On Board: Felony Punishment.**

26 ~~Notwithstanding any other provision of law, a~~ A ~~person convicted of a~~
27 ~~violation of § 18102 of this Chapter shall be~~ driving while impaired is guilty

1 of a felony of the third degree if at the time of ~~his or her~~ arrest ~~the person, he~~
2 ~~or she~~ was operating a motor vehicle in which a child under the age of
3 sixteen (16) was a passenger, or if a child under the age of sixteen (16) was
4 injured as a result of an accident in which the motor vehicle operated by the
5 person was involved, and notwithstanding any other provision of law, shall
6 be sentenced as follows:

7 (a) A term of incarceration of not more than five (5) years.

8 (b) A mandatory fine of Two Thousand Five Hundred Dollars
9 (\$2,500), and not more than Five Thousand Dollars (\$5,000.00).

10 (c) Suspension of a person's driving privilege for not less than
11 one (1) year without occupational driving privileges, which time
12 period may be reduced in the discretion of the Court provided on
13 motion by the defendant he has: 1) completed Court approved
14 treatment; 2) paid all fines and fees; 3) has not been charged with a
15 subsequent criminal offense; and 4) the Probation officer recommends
16 reduction based on satisfactory performance. The Court may further
17 reduce the period of suspension by no more than fifty percent (50%)
18 provided the defendant agrees to have installed either a breath alcohol
19 ignition interlock device (BAIID) as ordered by the Court, or an
20 electronic alcohol monitoring device approved by the Court.

21 (d) The Court shall notify the Department of Revenue and
22 Taxation of each conviction of this Section.

23 **§ 18110. Vehicular Negligence; Third Degree Felony.**

24 ~~Any violation of subsections (c) or (d) of § 18102 of this Chapter shall~~
25 ~~be a felony of the third degree.~~

26 **§ 18111 92110. Vehicular Homicide; Classified: Felony Punishment.**

1 ~~(a) A person is guilty of vehicular homicide if, while driving a~~
2 ~~vehicle, he or she does any act forbidden by law in the driving of the vehicle~~
3 ~~or if he or she negligently drives a vehicle, which act or negligence~~
4 ~~proximately causes death to any person other than himself or herself. As~~
5 ~~allowed in § 4.45 of Title 9, Guam Code Annotated, in proving that the~~
6 ~~person did any act forbidden by law, it shall not be necessary to prove that~~
7 ~~the person possessed a culpable mental state. Vehicular homicide is a felony~~
8 ~~of the second degree and shall be punishable by imprisonment in the custody~~
9 ~~of DOC and GPD for up to eight (8) years.~~

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

22 (a) A term of incarceration not to exceed eight (8) years,

23 (b) A fine of not to exceed ten thousand dollars (\$10,000.00),

24 and

25 (c) Revocation of the privilege to drive for five (5) years

26 without occupational driving privileges.

1 (d) The Court shall notify the Department of Revenue and
2 Taxation of each conviction of this Section.

3 **§ 92111. Vehicular Homicide While Driving Impaired: Felony**
4 **Punishment.**

5 A person is guilty of vehicular homicide while driving impaired, if he
6 or she does any act forbidden by law in driving while impaired, or if he or
7 she negligently operates or drives a vehicle while impaired, which act or
8 negligence proximately causes death to any person other than himself or
9 herself. Vehicular homicide while driving impaired is a felony of the second
10 degree, and notwithstanding any other provision of law, shall be punishable
11 as follows:

12 a) A term of incarceration of not less than a mandatory eight (8)
13 years, and not more than fifteen (15) years;

14 b) A fine of not more than ten thousand dollars (\$10,000.00),
15 and;

16 c) Revocation of driving privileges for eight (8) years without
17 occupational driving privileges.

18 d) The Court shall notify the Department of Revenue and
19 Taxation of each conviction of this Section.

20 ~~**§ 18112. Impoundment of Vehicle of Registered Owner Convicted or**~~
21 ~~**Charged of Violation of § 18102; Prior Offenses; Considerations;**~~
22 ~~**Exemption.**~~

23 ~~The interest of any owner of a motor vehicle which has been used in~~
24 ~~the commission of a violation of § 18102 of this Chapter for which the~~
25 ~~owner was convicted, is subject to impoundment as provided in this section.~~

26 ~~Upon conviction the court may order the vehicle impounded by GPD~~
27 ~~or its authorized agent at such locations as shall be designated by the Chief~~

1 of Police at the owner's expense for not less than one (1) day nor more than
2 thirty (30) days. For purposes of section, "owner of a motor vehicle"
3 includes the registered owners, legal owner, or the lessee of said vehicle at
4 the time of the offense.

5 If the offense occurred within five (5) years of a prior conviction of a
6 violation of § 18102 of this Chapter or of a prior offense as defined in §
7 18101(c) of this Chapter, the prior conviction shall also be charged in the
8 accusatory pleading and if admitted or found to be true by the jury upon a
9 jury trial or by the court upon a court trial, the court, except in an unusual
10 case where the interests of justice would best be served by not ordering
11 impoundment, shall order the vehicle impounded at the owner's expense for
12 not less than thirty (30) or more than ninety (90) days.

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

23 **§ 18113. Charging a Violation of § 18102 After Convictions of Violations**
24 **of § 18102; Effect of Prior Convictions on Sentencing and Driving**
25 **Privilege.**

26 (a) In any case charging a violation of § 18102 of this Chapter and the
27 offense occurred within five (5) years of one (1) or more separate

1 convictions of a violation of said § 18102 or of prior offenses as defined in §
2 18101(c) of this Chapter, the court shall not strike any separate conviction of
3 those offenses for purposes of sentencing in order to avoid imposing as part
4 of the sentence or term of probation, the minimum time of imprisonment and
5 the minimum fine, as provided in this chapter, or for purposes of avoiding
6 revocation, suspension, or restriction of the privilege to operate a motor
7 vehicle, as provided in this Chapter.

8 (b) In any case charging a violation of § 18102 of this Chapter, the
9 court shall obtain a copy of the driving record of the person charged from
10 the Department of Revenue and Taxation and may obtain any records or any
11 other source to determine if one (1) or more convictions have occurred
12 within five (5) years of the charged offense.

13 (c) If any separate convictions of violations of § 18102 of this Chapter
14 or of said prior offenses, are reported to have occurred within five (5) years
15 of the charged offense, the court shall notify each court where any of the
16 separate convictions occurred for the purpose of enforcing terms and
17 conditions of probation pursuant to Article 3 of this Chapter.

18 **~~§ 18114. Use of Controlled Substance as Defense to Violations.~~**

19 The fact that any person charged with driving under the influence of
20 alcohol or any controlled substance or a combination thereof, in violation of
21 § 18102 of this Chapter, is or has been entitled to use a controlled substance
22 shall not constitute a defense against any violation of said § 18102.

23 **~~§ 18115. Participation in Driver Improvement or Treatment Programs;~~**
24 **~~No Suspension or Stay of Proceedings Prior to Acquittal or Conviction~~**
25 **~~of Violations of § 18102; Effect After Conviction and Sentencing.~~**

26 (a) In any case in which a person is charged with a violation of §
27 18102 of this Chapter, prior to acquittal or conviction, the court shall not

1 ~~suspend or stay the proceedings for the purpose of allowing the accused~~
2 ~~person to attend or participate, nor shall the court consider dismissal of or~~
3 ~~entertain a motion to dismiss the proceedings because the accused person~~
4 ~~attends or participates during that suspension, in any one (1) or more~~
5 ~~education, training, or treatment programs, including, but not limited to, a~~
6 ~~driving improvement program, a treatment program for persons who are~~
7 ~~habitual users of alcohol or other alcoholism program, a program designed~~
8 ~~to offer alcohol service to problem drinkers, an alcohol or drug education~~
9 ~~program, or a treatment program for persons who are habitual users of~~
10 ~~controlled substances or other drug related program.~~

11 ~~(b) This section shall not apply to any attendance or participation in~~
12 ~~any education, training, or treatment programs after conviction and~~
13 ~~sentencing, including attendance or participation in any of those programs as~~
14 ~~a condition of probation granted after conviction when permitted pursuant to~~
15 ~~this article.~~

16 ~~(c) The court may at its discretion allow credit for therapeutic~~
17 ~~treatment.~~

18 ~~**§ 18116. Restriction on Privilege to Operate Motor Vehicles; Markings**~~
19 ~~**on Licenses and Records; Removal of Restriction; Notice and**~~
20 ~~**Recordation of Probation.**~~

21 ~~(a) If a person's privilege to operate a motor vehicle is restricted by a~~
22 ~~court pursuant to this Chapter, the court shall issue an occupational driving~~
23 ~~permit in a form designed by the Division of Motor Vehicle, Department of~~
24 ~~Revenue and Taxation. The permit shall be displayed in the rear window of~~
25 ~~any vehicle driven by the motorist granted limited driving privileges. The~~
26 ~~court shall promptly notify the Department of Revenue and Taxation (the~~
27 ~~"Department") of the terms of the restriction in a manner prescribed by the~~

1 ~~Department. The clerk of court shall punch a hole in the lower right hand~~
2 ~~side of the person's license, indicating a restriction. The Department shall~~
3 ~~place that restriction on the person's records in the Department and enter the~~
4 ~~restriction on any license subsequently issued by the Department to that~~
5 ~~person during the period of the restriction. If the person removes the permit~~
6 ~~or fails to produce the punched license, he or she shall be guilty of a felony~~
7 ~~of the third degree.~~

8 ~~(b) The cost of the permit shall be borne by the person whose~~
9 ~~privilege to operate a motor vehicle is restricted.~~

10 ~~(c) If the court removes a restriction before the end of the previously~~
11 ~~specified term pursuant to § 18110 of this Chapter, the court shall so mark~~
12 ~~the person's driver's license in a manner prescribed by the Department and~~
13 ~~promptly notify the Department of the removal of the restriction.~~

14 ~~(d) If a person is placed on probation pursuant to this Chapter, the~~
15 ~~court shall promptly notify the Department of the probation and~~
16 ~~probationary term and conditions in a manner prescribed by the Department.~~
17 ~~The Department shall place the fact of probation and the probationary term~~
18 ~~and conditions on the person's record in the Department.~~

19 ~~(e) If a person's privilege to operate a motor vehicle is required or~~
20 ~~ordered to be suspended or revoked by the Department pursuant to other~~
21 ~~provisions of this title upon the conviction of an offense under this Chapter,~~
22 ~~at the time for sentencing, that person shall be present in court and each and~~
23 ~~every operator's license of that person shall be surrendered to the court~~
24 ~~where the Clerk of Court shall punch a hole in such license.~~

25 ~~(f) Upon such person completing his or her sentence for such~~
26 ~~conviction, the court shall transmit the license or licenses to the Department~~

1 for reissuance if such person passes the drivers license examination given by
2 the Department.

3 **~~§ 18117. Separate Conviction; Challenge to Constitutional Validity; Use~~**
4 **~~in Judicial or Administrative Proceedings.~~**

5 Only one (1) challenge shall be permitted to the constitutionality of a
6 separate conviction of a violation of § 18102 of this Chapter, which was
7 entered in a separate proceeding to declare a separate judgment of conviction
8 constitutionally invalid. A determination by the court that the separate
9 conviction is constitutional precludes any subsequent attack on
10 constitutional grounds in a subsequent prosecution in which the same
11 separate conviction is charged. Any determination that a separate conviction
12 in unconstitutional precludes any allegation or use of that separate
13 conviction in any judicial or administrative proceeding, and the Department
14 shall strike that separate conviction from its records. Pursuant to § 18124 of
15 this Chapter, the court shall report to the Department any determination
16 upholding a conviction on constitutional grounds and any determination that
17 a conviction is unconstitutional.

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

22 **~~§ 18118. Dismissal of Allegation of Violation of § 18102 of This Chapter;~~**
23 **~~Substitution of Lesser Offense or Dismissal or Striking of Separate~~**
24 **~~Conviction; Reasons by Court and Prosecution.~~**

25 When an allegation of a violation of § 18102 of this Chapter is
26 dismissed by the court, an allegation of a different or lesser offense is
27 substituted for an allegation of a violation of said § 18102, or an allegation

1 ~~of a separate conviction is dismissed or stricken, the court shall specify on~~
2 ~~the record its reason or reasons for the order. The court shall also specify on~~
3 ~~the record whether the dismissal, substitution, or striking was requested by~~
4 ~~the prosecution and whether the prosecution concurred in or opposed the~~
5 ~~dismissal, substitution, or striking.~~

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

14 **§ 18119 92112. Drinking While Driving a Motor Vehicle Upon Any**
15 **Highway: Petty Misdemeanor: Punishment.**

16 ~~No~~ It is unlawful for any person shall to drink any alcoholic beverage
17 or consume a controlled substance while driving a motor vehicle upon any
18 highway. The penalties for violation of within this territory. § 18119 shall be
19 the same as the first offense in § 18104 of this Chapter.

20 **§18120 92113. Drinking While Riding in a Motor Vehicle: Petty**
21 **Misdemeanor: Punishment.**

22 It is unlawful for Any person who to drinks any alcoholic beverage
23 or consumes a controlled substance while in a motor vehicle upon a highway
24 within this territory. Any person convicted of violating this Section shall be
25 guilty of a petty misdemeanor.

26 **§ 18121 92114. Possession of Opened Container in a Motor Vehicle of**
27 **Alcohol: Petty Misdemeanor: Punishment.**

1 (a) ~~It shall be a misdemeanor~~ is unlawful for any person to transport
2 or possess ~~in any moving vehicle upon a public highway, street or alley any~~
3 ~~alcoholic beverage, or any intoxicating beverage, except in the original in a~~
4 ~~container which shall not have been opened and from in~~ which the original
5 cap or seal ~~shall not have been removed, unless the opened of the container~~
6 has been opened, broken, or the contents of which have been partially
7 removed when the vehicle is upon a public highway. Any person convicted
8 of violating this Section shall be guilty of a petty misdemeanor.

9 (b) It is unlawful for the registered owner of a vehicle, when the
10 registered owner is not then present in a sealed, the vehicle, to knowingly
11 permit another person to store in the registered owner's motor vehicle
12 alcoholic in a container in which the original cap or seal of the container has
13 been opened, broken, or the contents of which have been partially removed
14 when the vehicle is upon a public highway. Any person convicted of
15 violating this Section shall be guilty of a petty misdemeanor.

16 (c) Subsection (a) does not prohibit the transport, possession or
17 storage of alcoholic in which the original cap or seal of the container has
18 been opened, broken, or the contents of which have been partially removed
19 if the container is secured or in a rear compartment not or trunk of the
20 vehicle not normally occupied by the driver or a passenger, or a rear
21 compartment which is not immediately accessible to the driver or any other
22 person in passenger, while the vehicle while it is in motion. Any person
23 violating the provisions upon a public highway. A front passenger glove or
24 utility compartment is not acceptable for purposes of this Section and its
25 Subsections shall be deemed guilty of a misdemeanor exemption.

26 (b) ~~The provisions of Subsection (a) of this~~ (d) This Section shall does
27 not apply to the passenger area of living quarters of a motor home or

1 camper, a bus, or a limousine, provided the operator is enclosed within a
2 driver's compartment not accessible to passengers, clients or customers
3 where alcohol is present while the vehicle is in motion upon a public
4 highway.

5 ~~(c) No employee, driver or agent of any limousine or bus company~~
6 ~~shall consume, nor be permitted to consume, any alcoholic beverage while~~
7 ~~on duty.~~

8 ~~(d) Unless authorized by license and~~

9 **§ 92115. Marijuana Use While Driving a Motor Vehicle: Petty**
10 **Misdemeanor: Punishment.**

11 It is unlawful for any person, whether a driver or passenger, to
12 consume marijuana in any manner including, but not limited to, smoking or
13 ingesting in a motor vehicle when the vehicle is upon the public highway.
14 Any person convicted of violating this Section shall be guilty of a petty
15 misdemeanor.

16 **§ 92116. Exceptions for Alcohol Use in Tour Buses and Limousines.**

17 Alcoholic beverages may be sold, offered for sale, and consumed only
18 by passengers, not to include the operator, within the premises of a bus or
19 limousine only by a business authorized and issued a license as prescribed
20 by the Alcoholic Beverage Control Board by regulation, no alcoholic
21 beverage shall be sold, offered or consumed by any person within the
22 premises of any limousine or bus. Each limousine and bus authorized by this
23 Act to permitting the sell, offer or allow of alcoholic beverages within the
24 premises of the limousine or bus shall be individually licensed and shall be
25 required to display such license within the limousine or bus. The license
26 shall include the vehicle identification number of the vehicle.

1 ~~(e) No alcoholic beverages shall be sold, offered or consumed by any~~
2 ~~person within the premises of any limousine or bus, except for a bus or~~
3 ~~limousine, and only during authorized hours prescribed as permitted by the~~
4 ~~Alcoholic Beverage Control Board.~~

5 ~~(f) The license, and which license is prominently display within the~~
6 ~~bus or limousine. This exemption in Subsection (b) of this Section shall does~~
7 ~~not apply if in the event any passenger is a minor below under the age of~~
8 ~~twenty-one (21) years unaccompanied of age, unless accompanied by a~~
9 ~~parent or legal guardian. It shall be is the duty of the operator of the driver of~~
10 ~~the vehicle bus or limousine to verify the age-ages of all every passengers,~~
11 ~~whom alcoholic beverages is intended to be sold or consumed. Any person~~
12 ~~or company found in violation this Subsection~~

13 ~~(g) As used in this Section:~~

14 ~~(1) 'Bus' means a vehicle chartered for transportation of persons for~~
15 ~~hire. It shall not mean a school bus transporting children, open vehicles~~
16 ~~resembling trolleys, or a vehicle operated pursuant to a public or private~~
17 ~~franchise operating over a regularly scheduled route; and~~

18 ~~(2) 'Limousine' means a chauffeur driven motor vehicle, other than a~~
19 ~~bus or taxicab, designed and used for transportation of persons for~~
20 ~~compensation.~~

21 ~~§ 18122. Storage of Opened Container.~~

22 ~~A person shall be guilty of a misdemeanor if he or she is the registered~~
23 ~~owner of any motor vehicle or the driver, if the registered owner is not then~~
24 ~~present in the vehicle, keeps in a motor vehicle, when the vehicle is upon~~
25 ~~any highway, any bottle, can, or other receptacle containing any alcoholic~~
26 ~~beverage which has been opened, or a seal broken, or the contents of which~~
27 ~~have been partially removed, unless the container is kept in the trunk of the~~

1 vehicle, or kept in some other area of the vehicle not normally occupied by
2 the driver or passengers, if the vehicle is not equipped with a trunk. A utility
3 compartment or glove compartment shall be deemed to be within the area
4 occupied by the driver and passengers. This Section shall not apply to the
5 living quarters of a house, car or camper. This Section shall not apply to
6 persons and vehicles exempted by §18121, supra.

7 **92117. Occupational Driving Permit: First Offender Only.**

8 An Occupational Driving Permit may be issued to a person convicted
9 of a first offender violation under Section 104 by the Court authorizing the
10 person to drive for employment purposes, and as permitted by the Court for
11 therapeutic rehabilitation. The person whose privilege to drive is suspended
12 shall immediately surrender to the Court his or her driver's license, and if
13 valid, may be granted an Occupational Driving Permit for six (6) months.
14 The Court may establish by rule and procedure the manner of issuance of an
15 Occupational Driving Permit, and must notify the Department of Revenue &
16 Taxation promptly regarding the person's restriction on his or her driving
17 privileges. The Court is authorized to charge a reasonable fee for issuance of
18 the Occupational Driving Permit which must be fully paid before the permit
19 can be issued. The cost of the permit shall be borne by the person whose
20 privilege to operate a motor vehicle has been restricted by the Court. In the
21 event a person does not possess a valid driver's license at the time of
22 conviction, the person's privilege to apply for a driver's license shall be
23 prohibited for the full period of the suspension.

24 **§ 18123-92118. Suspension or Revocation of Driver's License: Process.**

25 The Department(a) The driver's license of a person whose privilege to
26 operate a motor vehicle has been suspended or revoked under this Chapter

1 shall be mutilated with a hole punched on the lower right-hand corner of the
2 license so as to identify it is a restricted license.

3 (b) A license that has been revoked shall be permanently seized from
4 a defendant by the Court and promptly transmitted to the Department of
5 Revenue and Taxation with a copy of the abstract of judgment. The Court is
6 authorized to maintain custody of a driver's license which is suspended
7 without occupational driving privileges until reinstatement.

8 (c) The Department of Revenue & Taxation shall immediately
9 suspend or revoke the privilege of any person to operate a motor vehicle for
10 the time period required by the judgment, and in accordance with this
11 Chapter, upon receipt of a duly-certified an abstract of judgment from the
12 record-Clerk of any courtCourt showing that the person has been convicted
13 of a violation of § 18102 of this Chapter. For purposes of this section, this
14 Act. The Department shall reinstate a person's driving privileges upon
15 receipt of an order of the court granting such reinstatement in accordance
16 with this Chapter, or upon expiration of the time restriction.

17 (d) The Court may establish by rule and procedure the process for
18 suspension or revocation shall be as follows: of a person's privilege to driver,
19 not inconsistent with the provisions herein.

20 (1) Violation of § 18102; first offense. Upon a conviction of a
21 violation of § 18102 of this Chapter, the privilege to operate a motor vehicle
22 shall be suspended for a period of six (6) months and restricted during this
23 period to travel to and from that person's place of employment and to and
24 from the program described in § 18115(b) of this Chapter. The clerk of court
25 shall take possession of the driver's license and mutilate it by punching a
26 hole in the lower right hand corner. The Department shall issue a restricted

1 ~~license if the license expires during the suspension. The restricted license~~
2 ~~shall also contain a hole punched in the lower right hand corner.~~

3 ~~(2) Violation of § 18102; second offense within five years of~~
4 ~~conviction of § 18102. Upon conviction or finding of a violation of § 18102~~
5 ~~of this Chapter within five (5) years of a conviction of said § 18102 or of a~~
6 ~~prior offense as defined in § 18101(c) of this Chapter, the privilege to~~
7 ~~operate a motor vehicle shall be suspended for a period of one (1) year with~~
8 ~~no exceptions for occupational privileges or travelling to and from the~~
9 ~~program described in § 18116(b). The clerk of court shall take possession of~~
10 ~~the person's driver's license and shall notify the Department of the~~
11 ~~revocation.~~

12 ~~(3) Violation of § 18102 within five years after three violations of §~~
13 ~~18102. If any person is convicted of a violation of § 18102 of this Chapter~~
14 ~~and the offense occurred within five (5) years of three (3) or more separate~~
15 ~~convictions of a violation of said § 18102 or of prior offenses as defined in §~~
16 ~~18101(c) of this Chapter, or any combination thereof, that person's driving~~
17 ~~privileges shall be revoked by the Department for a period of not less than~~
18 ~~five (5) years.~~

19 **~~§ 18124. Restriction or Suspension of Driving Privilege; Probation with~~**
20 **~~Conditions; Revocation of License.~~**

21 ~~(a) Unless ordered to do so by the court upon a finding that the terms~~
22 ~~and conditions of probation were violated, the Department shall not suspend,~~
23 ~~pursuant to paragraph (2) of § 18123 of this Chapter, but shall suspend for~~
24 ~~one (1) year and, thereafter, restrict for two (2) additional years the privilege~~
25 ~~of any person to operate a motor vehicle upon a conviction or finding that~~
26 ~~the person violated § 18102 of this Chapter, but only if the court has~~
27 ~~certified to the Department that the court has granted probation to the person~~

1 ~~on conditions which include the conditions specified in § 18301 of this~~
2 ~~Chapter and the court has restricted the privilege to operate a motor vehicle~~
3 ~~as provided in that section.~~

4 ~~(b) Unless ordered to do so by the court upon a finding that the terms~~
5 ~~and conditions of probation were violated, the Department shall not revoke,~~
6 ~~pursuant to paragraph (2) of said § 18123, but shall revoke for five (5) years,~~
7 ~~the privilege of any person to operate a motor vehicle upon a conviction or~~
8 ~~finding that the person violated said § 18102, but only if the court has~~
9 ~~certified to the Department that the court has granted probation to the person~~
10 ~~on conditions which include the conditions specified in said § 18301, and the~~
11 ~~court has ordered the Department to suspend the privilege to operate a motor~~
12 ~~vehicle as provided in that section.~~

13 ~~(c) So much of the Fund as is required is appropriated to the~~
14 ~~Department of Corrections to be used to compensate staff and provide~~
15 ~~supplies or facilities to house incarcerated persons convicted of~~
16 ~~misdemeanors and persons convicted of acts made unlawful in Article 1,~~
17 ~~Chapter 18 of 16 GCA.~~

18 ~~(d) The Director of Corrections may expend not more than Eight~~
19 ~~Thousand Dollars (\$8,000) per month from the fund for the purpose outlined~~
20 ~~in Subsection (c) of this Section, which the Administrative Director of the~~
21 ~~Court shall pay over to the Director of Corrections on a regular basis. Any~~
22 ~~funds in excess of the monthly payment to the Director of Corrections and~~
23 ~~all funds accumulated shall be disbursed in accordance with Subsection (c)~~
24 ~~of § 9211 of 7 GCA.~~

25 ~~(e) All abstracts of record showing a conviction that are forwarded to~~
26 ~~the Department shall state whether the court has granted probation to the~~
27 ~~person on conditions which include the conditions specified in said § 18301~~

1 and state the date on which the person consented to participate in the
2 program.

3 **§ 18124.1 92119. Driving While License Suspended, or Revoked For**
4 **Driving While Impaired.**

5 (a) ~~No~~ It is unlawful for a person shall to drive a motor vehicle on a
6 highway in Guam while this territory knowing, or having reason to know,
7 that his or her driver's license is suspended or revoked under this Chapter.
8 Any person convicted of violating this Section shall be guilty of a
9 misdemeanor.

10 (b) ~~As used in this Section, suspended driver's license means an~~
11 ~~operator's license, chauffeur's license, or driving privilege that has been~~
12 ~~suspended or revoked by judicial or administrative action, or seized by a~~
13 ~~police officer pursuant to law.~~

14 (c) ~~In any prosecution for driving while license suspended under this~~
15 ~~Section, competent evidence that the defendant's driver license was~~
16 ~~surrendered to a police an officer, or was suspended or revoked by order of a~~
17 ~~judge in open court, or that written notice of the suspension was mailed to~~
18 ~~defendant's last known address by the Department of Revenue and Taxation~~
19 ~~under this Chapter by an order of the Court, shall be prima facie evidence of~~
20 ~~the defendant's knowledge of the suspension or revocation.~~

21 (d) ~~Driving while license suspended is a misdemeanor, punishable by~~
22 ~~imprisonment for not more than one (1) year, or by a fine of not more than~~
23 ~~One Thousand Dollars (\$1,000.00), or both. In addition to any other penalty~~
24 ~~imposed upon a conviction, the sentencing court may order the defendant's~~
25 ~~driver's license to be suspended for an additional consecutive period of up to~~
26 ~~five (5) years.~~

27 **§ 92120. Participation in the Driving While Impaired Treatment Court.**

1 The Court may remove or reduce any restriction on a person's
2 privilege to drive and/or reduce any fine imposed resulting from a conviction
3 of any offense in this Chapter upon that person's participation in the Driving
4 While Impaired Treatment Court and the completion of any terms and
5 conditions imposed therefrom, provided that the person has also
6 demonstrated full compliance with probationary conditions.

7 **§ 92121. Dismissal for Completion of Driving While Impaired**
8 **Treatment Court; Permitted.**

9 Upon satisfactory completion of all conditions of probation and
10 treatment in DWI Treatment Court the Judge shall order the case dismissed
11 and expunged.

12 **§ 92122. No Conditional Discharge and Dismissal Permitted for**
13 **Offenses Involving Serious Injuries.**

14 The provisions of Sections 120 and 121 shall not apply in the case of a
15 violation defined as third degree felony in this Chapter, and that involves
16 bodily injury to any person other than the driver.

17 **§ 92123. Probation Allowed.**

18 Any person convicted under this Chapter may be granted probation at
19 the discretion of the Court, which may include, but is not limited to,
20 prohibition from consuming alcohol or controlled substance(s), payment of
21 restitution, mandatory alcohol and drug testing, obey all laws, perform
22 community service, agree to use an alcohol electronic device or BAIID,
23 random searches of home, vehicle and person, regular reporting to
24 Probation, and any other condition the Court deems reasonable.

25 ~~§ 18125~~ **92124. Safe Street Fund.**

26 (a) There is created within the Superior Court of Guam the (the
27 “Fund”), which shall be maintained separate and apart from the other funds

1 of the Superior Court. The fund shall be held in an interest bearing account.
2 All interest earned shall remain in the Fund.

3 (b) All fines collected for any of the acts made unlawful in §§ ~~18102,~~
4 ~~18109, 18111, 18120, and 18121~~ of Title 16 this Act, Superior Court of
5 ~~Guam Code Annotated, as amended from time to time, and for which~~
6 ~~punishment is prescribed in §§ 18104, 18105, 18106, 18107, 18109, 18110,~~
7 ~~18111, 18119, 18120 and 18121~~ of Title 16, Guam Code Annotated, as
8 ~~amended from time to time~~, shall be deposited in the Safe Streets Fund.

9 (c) So much of the Fund as is required is appropriated to the
10 Department of Corrections to be used to compensate staff and provide
11 supplies or facilities to house incarcerated persons convicted of
12 misdemeanors and persons convicted of acts made unlawful in Article 1,
13 Chapter 18 of Title 16, Guam Code Annotated.

14 (d) The Director of Corrections may expend not more than Eight
15 Thousand Dollars (\$8,000) per month from the fund for the purpose outlined
16 in Subsection (c) of this Section, which the Administrative Director of the
17 Courts shall pay over to the Director of Corrections on a regular basis. Any
18 funds in excess of the monthly payment to the Director of Corrections and
19 all funds accumulated shall be disbursed in accordance with Subsection (c)
20 of § 9211 of Title 7, Guam Code Annotated.

21 (e) The Administrator of the Courts and the Director of Corrections
22 shall submit an annual report to I Maga'lāhen Guåhan and to the Speaker of
23 I Liheslaturan Guåhan regarding the status of the Fund no later than ninety
24 (90) days after the close of the preceding fiscal year. Such report shall be
25 included in the financial statements of the Judiciary of Guam, including its
26 year-end financial statements.

27 **§ 92125. Electronic Alcohol Monitoring Device, Rules and Regulations.**

1 The Judicial Council may promulgate rules, regulations, and proposed
2 fees relative to the use of electronic alcohol monitoring devices by
3 defendants convicted under this Chapter.

4 **§ 92126. Presumptions Affecting the Burden of Proof: Defenses.**

5 (a) The amount of alcohol in the person's blood as shown by an
6 analysis of that person's blood or breath shall give rise to the following
7 presumptions affecting the burden of proof:

8 1. If there was at that time less than 0.08 percent by weight of alcohol
9 in the person's blood, that fact shall not give rise to any presumption that the
10 person was or was not under the influence of an alcoholic beverage, but the
11 fact may be considered with other competent evidence in determining
12 whether the person was driving while under the influence of alcoholic at the
13 time of the alleged offense.

14 2. If there was at that time 0.08 percent or more by weight of alcohol
15 in the person's blood, or 0.04 percent or more by weight of alcohol in a
16 person's blood who is under the age of twenty-one (21), it shall be presumed
17 that the person was under the influence of an alcoholic beverage at the time
18 of the alleged offense.

19 (b) Before such presumptions are made in cases involving a breath
20 test, the People must show the following by a preponderance of the
21 evidence:

22 1. That the instrument used for the breath test was properly checked
23 and in proper working order at the time of conducting of the breath test;

24 2. That the person had nothing in his mouth at the time of the breath
25 test and that he had taken no food or drink within fifteen (15) minutes prior
26 to taking the breath test;

1 3. That the breath test was given by a qualified operator and the
2 proper manner;

3 4. The provisions of this Subsection shall not be construed as limiting
4 the introduction of any other competent evidence bearing upon the question
5 whether the person ingested alcoholic, or was driving while impaired at the
6 time of the alleged offense.

7 (c) It is a rebuttable presumption that a person was under the influence
8 of alcohol if the person had 0.08 percent or more, by weight, of alcohol in
9 his or her blood at the time of the performance of a blood or breath test
10 within three (3) hours after driving.

11 (d) It is a rebuttable presumption that a person under the age of
12 twenty-one (21) was under the influence of alcohol if the person had 0.04
13 percent or more, by weight, of alcohol in his or her blood at the time of the
14 performance of a blood or breath test within three (3) hours after driving.

15 (e) As allowed under Title 9 GCA §4.45, proving that the person did
16 any act forbidden by law, it shall not be necessary to prove that the person
17 possessed a culpable mental state.

18 (f) The fact that any person, charged in violation of this Chapter, is or
19 has been entitled to use a controlled substance shall not constitute a defense.

20 **ARTICLE 2**

21 **IMPLIED CONSENT AND SUSPENSION OR REVOCATION OF** 22 **DRIVING PRIVILEGES AND LICENSE**

23
24 § ~~18201~~ 92201. Implied Consent of Driver of Motor Vehicle to Submit to
25 Blood, or Breath Testing to Determine Alcohol or
26 Controlled Substances Content of Blood.

1 a blood or urine, or breath test for the purpose of determining the alcohol or
2 controlled substance content of that person's blood or urine.

3 (d) No person other than the authorized staff of a licensed clinical
4 laboratory certified by Health Care Financing Administration Clinical
5 Laboratory Improvement Act (>HCFA-CLIA'), or by the Joint Commission
6 of Accreditation of Health Organization may withdraw blood or urine for the
7 purpose of determining the alcohol or controlled substance content thereof.
8 This limitation shall not apply to the taking of a breath specimen. As soon as
9 the results of a blood or urine test performed pursuant to this Section are
10 available, the custodian of the record of the test shall provide, without
11 subpoena, a true copy of the results of the tests to the Guam Police
12 Department or criminal prosecutors. No physician, nurse, hospital, clinical
13 laboratory or any employee thereof, shall be subject to civil liability or suit
14 for providing blood or urine test results as required by the Subsection.

15 (e) The implied consent of a person to be tested shall not be
16 withdrawn by reason of the person's being dead, unconscious or in any state
17 which renders the person incapable of consenting or refusing to be tested. In
18 such event, a test of the person's blood or urine shall be administered.

19 (f) If a person under arrest refuses to submit to a breath or blood or
20 urine test, none shall be given. The person shall be warned, however, that his
21 or her failure to be tested may be used in evidence against him or her in any
22 charge arising from the arrest.

23 (g) In addition to the warnings provided in Subsection (f) of this
24 Section, the arresting officer shall warn the person that refusal to submit to a
25 blood or urine, or breath test will result also in the following:

26 (1) the person must immediately surrender his or her driver's license
27 to the officer;

1 (2) the officer will take custody of the license and will forward it to
2 the Department of Revenue and Taxation, Motor Vehicle Division, along
3 with the officer's sworn statement, affidavit or written declaration as
4 required by § ~~18202~~ 92202 of Title 16 of the Guam Code Annotated; and

5 (3) the driver's license will not be returned and the person's driving
6 privileges restored until completion of all administrative and court
7 proceedings against the person, and it is so ordered by the Director of
8 Revenue and Taxation or the courts.

9 **§ ~~18202~~ 92202. Sanctions for Refusal to Submit to or Failure to**
10 **Complete a Blood, or Breath Test.**

11 If any person refuses a police officer's request to submit to, or fails to
12 complete a blood or breath test or tests, upon receipt of a police officer's
13 sworn statement, affidavit or written declaration under penalty of perjury
14 that the police officer had reasonable cause to believe the person had been
15 operating and in physical control of a motor vehicle in violation of § ~~18102~~
16 92102 of this Chapter and that the person refused to submit to, or failed to
17 complete, the blood or breath tests after having been informed by the police
18 officer of the consequences under subsection (f) of § ~~18201~~ 92201 and this §
19 ~~18202~~ 92202 for refusing to submit to or failing to complete the blood or
20 breath test or tests, then the Department of Revenue and Taxation (the
21 Department) shall administratively (a) suspend the person's privilege and
22 license or permit to operate a motor vehicle for a period of six (6) months, or
23 (b) revoke the person's privilege and license or permit to operate a motor
24 vehicle for a period of two (2) years if the person has been convicted of a
25 separate prior violation of § ~~18102~~ 92102 or has been administratively
26 determined to have committed a prior violation of § ~~18102~~ 92102 of this
27 Chapter or convicted of any prior offense of driving under the influence

1 violation, or any combination thereof, within five (5) years of the date of the
2 refusal, or failure to complete the blood or breath test, or (c) revoke the
3 person's privilege and license or permit to operate a motor vehicle for a
4 period of three (3) years if the person has been convicted of two (2) or more
5 prior violations of § ~~18102~~ 92102 or has been administratively determined to
6 have committed two (2) or more prior violations of § ~~18202~~ 92202 of this
7 Chapter or convicted of any two (2) or more offenses of driving under the
8 influence, or any combination thereof, within five (5) years of the date of the
9 refusal or failure to complete the blood or breath test. For the purposes of
10 this Chapter, police officer means an officer of the Guam Police Department,
11 or a security officer of either the Guam Airport Authority or the Guam Port
12 Authority but only while such security officer is carrying on his or her duties
13 within the confines of the property under the control and jurisdiction of the
14 Authority by which he or she is employed.

15 **§ ~~18203~~ 92203. Administrative Revocation or Suspension of Driving**
16 **Privilege and License Procedures.**

17 (a) If a person is arrested for a violation of § ~~18102~~ 92102 of this
18 Chapter, on a determination by the police officer that there was reasonable
19 cause for the arrest then: (1) the police officer shall inform the person that he
20 or she has the option of taking blood or urine, or breath test, (2) the police
21 officer shall also inform the person that a refusal to submit to or a failure to
22 complete the blood or urine, or breath tests may be used in evidence against
23 him or her in criminal proceedings, and that he or she may be subject to
24 administrative suspension or revocation by the Department of his or her
25 privileges and license or permit to operate a motor vehicle, and (3) the
26 officer also shall inform the person that a refusal to take the test or a failure

1 to complete the test requires the officer to immediately take custody of the
2 person's driver's license for forwarding to the Department.

3 (b) The police officer complies with the requirements of § ~~18203~~
4 92203(a) of this Chapter and the person refuses to submit to or fails to
5 complete the blood or breath test, then the police officer shall within three
6 (3) working days of the arrest sign and submit to the Department an affidavit
7 or declaration under penalty of perjury setting forth such facts.

8 (c) Upon receipt by the Department of the police officer's affidavit or
9 declaration, an administrative action shall commence and the Department
10 shall within ten (10) working days notify the person in writing of the
11 commencement thereof. Notice of the administrative action shall be
12 provided to the person as follows:

13 (1) By delivering a copy thereof to the person; or

14 (2) By leaving a copy thereof at the person's dwelling house or usual
15 place of abode with some person of suitable age and discretion residing
16 therein; or

17 (3) By mailing a copy thereof to the person at his or her last known
18 address through certified or registered mail. The notice of the administrative
19 action shall inform the person of the matters set forth in §§ ~~18202~~ 92202 and
20 ~~18203~~ 92203 of this Chapter.

21 (d) Within fifteen (15) working days from the date of receipt of the
22 notice from the Department, the person may request in writing a hearing on
23 a form provided by the Department in its notice of the action taken.

24 (e) Upon receipt by the Department of the person's written request for
25 a hearing, the Department shall within five (5) working days notify the
26 person of a hearing date in the same manner as set forth in subsection (c),
27 (1), (2), and (3), of this § ~~18203~~ 92203. The Department shall schedule the

1 hearing to commence within fifteen (15) working days of the person's
2 written request for the hearing. The Director or his designee shall preside at
3 and conduct the hearing.

4 (f) The scope of the hearing shall be limited to whether the
5 requirements of this § 1820392203 were met.

6 (g) At the commencement of the initial or continued hearing, if for
7 any reason the person who is alleged to have refused to submit to or failed to
8 complete blood or urine, or breath testing did not surrender his or her
9 driver's license to the arresting officer, the person shall surrender to the
10 Department any license or permit issued in the name of the person which
11 authorizes the person to drive and be in physical control of a vehicle, and
12 which license or permit was not previously suspended or revoked.

13 (h) At the hearing the driver has the burden of proof to show by the
14 preponderance of the evidence that the requirements of this § ~~18203~~ 92203
15 were not met. If the hearing is continued to another date and time by the
16 Director, or the Director's designee, or if at the conclusion of the initial or
17 continued hearing, the Director, or the Director's designee, dismisses the
18 administrative action, then the Department shall return the person's driver's
19 license or permit to him or her.

20 (i) At the conclusion of the initial or continued hearing, the Director
21 or his designee shall render a decision to suspend or revoke the person's
22 driving privilege and license or permit, as authorized under § ~~18202~~ 92202
23 of this Act, or to dismiss the administrative action. The decision and order of
24 the Director or his designee shall be final but subject to judicial review.

25 (j) If the Director or his designee determines, upon a hearing of the
26 matter, to suspend or revoke the person's privilege and license or permit to
27 operate a motor vehicle, the suspension or revocation decision shall

1 thereupon become effective. If the person does not appear at that hearing,
2 the Director or his designee shall, in writing, determine, based upon a
3 preponderance of the evidence, that the person whose license or permit is to
4 be suspended or revoked is the person so charged and shall declare that by
5 default the license or permit is revoked or suspended. If the person does
6 appear at the hearing, the Director or his designee shall, in writing, based
7 upon the preponderance of the evidence, show that the person was (i) either
8 driving and in physical control of the motor vehicle or not, (ii) either refused
9 to take a breathalyzer or blood test or did not, and (iii) either was given
10 adequate warning of the alternatives before so suspending or revoking the
11 person's license or permit or was not.

12 (k) If the Director's or his designee's decision is to revoke or suspend
13 the person's privilege and license or permit to drive, the person may file a
14 petition for judicial review in the Superior Court of Guam within ten (10)
15 working days of such decision and order.

16 (1) The filing of the petition shall not operate as a stay of the
17 administrative revocation or suspension nor shall the court stay the
18 administrative revocation or suspension pending the outcome of the judicial
19 review.

20 (2) The petition shall state with specificity the grounds upon which
21 the petitioner seeks reversal of the administration revocation.

22 (3) The court shall schedule the judicial review as soon as practicable,
23 and the review shall be on the record of the administrative hearing without
24 taking additional testimony or evidence.

25 (4) If the petitioner fails to appear without just cause, the court shall
26 affirm the administrative revocation or suspension.

1 (5) The sole issues before the court shall be whether the Department
2 exceeded constitutional or statutory authority, erroneously interpreted the
3 law, acted in an arbitrary or capricious manner, committed an abuse of
4 discretion, or made a determination that is unsupported by the evidence in
5 the record.

6 (6) Unless the administrative revocation or suspension is reversed, the
7 revocation or suspension shall become effective as set out in subsection (j)
8 of this § ~~18203~~ 92203.

9 (l) Failure of the peace officer or the Department to comply with the
10 requirements in subsections (a), (b), (c), (e) or (i) of this § ~~18203-92203~~ shall
11 result in a dismissal of the action in favor of the person.

12 (m) Failure of the person to comply with subsections (d), (h) and (k)
13 of this § ~~18203~~ 92203 shall be deemed a waiver of the rights therein, and the
14 revocation or suspension if supported by the affidavit shall become effective
15 pursuant to §§ ~~18202~~ 92202 and ~~18203~~ 92203 of this Chapter.

16 (n) The Department may issue a written subpoena directing any
17 person to attend a hearing before the Director or his designee and in a proper
18 case to bring with him or her any book, record or paper which may be
19 deemed material as evidence in the case. The fee for such attendance shall
20 be the same as the fees of witnesses before the Superior Court, except that if
21 the witness is a government employee, no witness fee shall be given. The
22 subpoena shall be issued in the name of the Department, shall be directed to
23 the witness, and shall be served in the same manner as subpoenas to appear
24 and testify before the court. If any person or persons summoned to testify
25 shall refuse or neglect to obey said subpoena, upon petition, the court may
26 compel the attendance of such person or persons before the Department, or
27 punish said person or persons for contempt in the same manner provided by

1 law for securing the attendance of witnesses and their punishment for
2 neglect or refusal to attend the Superior Court.

3 (o) Article 2 of the Administrative Adjudication Law [5 GCA Chapter
4 9, Article 2 - Hearing Procedures] shall not apply to administrative actions
5 and hearings under this § ~~18203~~ 92203.

6 **§ ~~18204~~ 92204. Suspension; Refusal Under Implied Consent Law; Time**
7 **to Run Consecutively With Other Restrictions, Suspensions or**
8 **Revocations.**

9 (a) The purpose of this § ~~18204~~ 92204 is to require that any
10 suspension or revocation under § ~~18123~~ of this Chapter and any restriction,
11 suspension or revocation under §§ ~~18201~~ 92201 or ~~18124~~ of under this
12 Chapter resulting from the same arrest are cumulative and shall be imposed
13 consecutively, if so ordered by the court.

14 (b) If (1) an abstract of conviction is received by the Department for
15 an offense which requires the Department to restrict, suspend, or revoke the
16 driving privilege of a person after conviction or finding of a violation
17 pursuant to §§ ~~18201~~ 92201 or ~~18202~~ 92202 of this Chapter, and (2) there is
18 a suspension of that person's driving privilege already in effect for refusal to
19 consent to, or for failure to complete, a blood or breath test pursuant to said
20 § ~~18201~~ 92201, and (3) that suspension is administratively final and resulted
21 from the same arrest, and (4) the sentencing court orders these restrictions,
22 suspensions, revocations, or combination thereof to run consecutively, then
23 the restriction, suspension, or revocation resulting from the conviction or
24 finding pursuant to § ~~18123~~ or § ~~18124~~ of this Chapter shall commence after
25 the suspension already in effect pursuant to said § ~~18201~~ 92201 has
26 terminated.

27 **§ ~~18205~~ 92205. Filing of Rules.**

The Department may adopt rules to govern its procedures under this Chapter. Article 3 of the Administrative Adjudication Law [5 GCA Chapter 9 - Rule-Making Procedure] is not applicable to such rules so adopted by the Department nor to any procedures prescribed therein.

§ 18206 92206. Effective Date of Implementation.

The effective date to implementing the provisions of § ~~18203~~ 92203 of this Chapter on the Department's administrative revocation or suspension of driving privileges and licenses or permits of persons who refuse to submit to or fail to complete a blood or breath test shall be April 1, 1995.

ARTICLE 3

PROBATION AND GENERAL CONSIDERATIONS OF
PROBATION

~~§ 18301 92301. Conditions of Probation for Violation of § 18102 92102.~~

§ 18302 92302. Probation Granted Under § 18402 92102; Failure to Comply with Terms and Conditions; Revocation or Termination; Procedure.

§ 18303 92303. General Probation Conditions.

~~§ 18301 92301. Conditions of Probation for Violation of § 18102 92102.~~

(a) If the court grants probation to any person punished under § 1810292102 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.

1 (2) That the person be referred to a qualified substance abuse
2 counselor for an assessment of the person's alcohol dependence and need for
3 treatment.

4 (3) That the counselor shall submit a report with recommendations to
5 the court, which may require the person to obtain appropriate treatment.

6 (4) That all costs for such assessment or treatment or both shall be
7 borne by the penalized person at the discretion of the court.

8 **§ ~~18302~~ 92302. Probation Granted Under § ~~18102~~ 92102; Failure to**
9 **Comply with Terms and Conditions; Revocation or Termination;**
10 **Procedure.**

11 (a) If any person has been granted probation under the conditions of §
12 ~~18301~~ 92301 of this Chapter and fails at any time to participate successfully
13 in the treatment program designated by the court, then the court shall revoke
14 or terminate the probation, and the court may revoke or terminate the
15 probation if the person fails to comply with any other term or condition of
16 probation, and the court shall proceed under either of the following
17 provisions.

18 (1) Revoke the suspension of sentence and order the Department to
19 suspend the person's privilege to operate a motor vehicle from the date of the
20 order revoking or terminating probation.

21 (2) Grant a new term of probation on the condition that the person be
22 placed in the custody by DOC or GPD for at least thirty (30) days and order
23 the Department to suspend the person's privilege to operate a motor vehicle
24 from the date of the new grant of probation.

25 **§ ~~18303~~ 92303. General Probation Conditions.**

26 (a) If any person is convicted of a violation of § ~~18102~~ 92102 of this
27 Chapter, the court shall not stay or suspend pronouncement of sentencing

1 and shall pronounce sentence in conjunction with the conviction in a
2 reasonable time, including time for receipt of any pre-sentence investigation
3 report.

4 (b) If any person is convicted of a violation of § ~~18102~~ 92102 of this
5 Chapter and is granted probation, the terms and conditions of probation shall
6 include, but not be limited to the following:

7 (1) A period of probation not less than two (2) years if it is a
8 misdemeanor and not less than five (5) years if it is a felony.

9 (2) A requirement that the person shall not consume alcohol or any
10 controlled substances or any combination thereof not prescribed by a
11 medical doctor.

12 (3) A requirement that the person, if arrested for a violation of §
13 ~~18102~~ 92102 of this Chapter, shall not refuse to submit to a blood or breath
14 test for the purpose of determining the alcohol or controlled substance
15 content of his or her blood.

16 (4) A requirement that the person shall not commit any criminal
17 offense.

18 (5) A requirement that the person be referred to a qualified substance
19 abuse counselor for an assessment of the person's alcohol dependency and
20 need for treatment.

21 22 ARTICLE 4

23 IGNITION INTERLOCK DEVICES

24
25 § ~~18401~~ 92401. Ignition Interlock Devices, Requiring; Unlawful Acts.

26 § ~~18402~~ 92402. Ignition Interlock Devices, Certification; Warning Label.

1 **§ ~~18401~~ 92401. Ignition Interlock Devices, Requiring; Unlawful Acts.**

2 (a) In addition to any other authorized penalties, the Court may
3 require that any person who is convicted of driving under the influence in
4 violation of this Chapter shall not operate a motor vehicle unless that vehicle
5 is equipped with a functioning ignition interlock device certified by the
6 Department as provided in §~~18402~~ 92402 of this Article, and installed in
7 such a manner that the vehicle will not start if the operator's blood alcohol
8 level is in excess of five one-hundredths of one percent (0.05%) or as
9 otherwise specified by the court. The court may require the use of an
10 approved ignition interlock device for a period of not less than six (6)
11 months, if the person is permitted to operate a motor vehicle, whether or not
12 the privilege to operate a motor vehicle is restricted, as determined by the
13 court. The court, however, shall order placement of an ignition interlock
14 device in those circumstances required by this Chapter.

15 (b) If the court imposes the use of an ignition interlock device, the
16 court shall:

17 (1) stipulate on the record the requirement for, and the period
18 of, the use of a certified ignition interlock device;

19 (2) order that the records of the Department reflect such
20 requirement;

21 (3) order that an ignition interlock device be installed, as the
22 court may determine necessary, on any vehicle owned or operated by
23 the person;

24 (4) determine the person's ability to pay for installation of the
25 device if the person claims inability to pay. If the court determines
26 that the person is unable to pay for installation of the device, the court
27 may order that any portion of a fine paid by the person for a violation

1 of this Chapter shall be allocated to defray the costs of installing the
2 device; and

3 (5) require proof of installation of the device and periodic
4 reporting to the Department for verification of the operation of the
5 device in the person's vehicle.

6 (c) If the court imposes the use of an ignition interlock device on a
7 person whose driving privilege is not suspended or revoked, the court shall
8 require the person to provide proof of compliance to the Department within
9 thirty (30) days. If the person fails to provide proof of installation within that
10 period, absent a finding by the court of good cause for that failure which is
11 entered in the court record, the court shall notify the Department of Revenue
12 and Taxation.

13 (d) If the court imposes the use of an ignition interlock device on a
14 person whose driving privilege is suspended or revoked for a period of less
15 than three (3) years, the department shall require proof of compliance before
16 reinstatement of the person's driving privilege.

17 (e) (1) In addition to any other provision of law upon conviction of a
18 violation of this Section, the Department shall revoke the person's driving
19 privilege for one (1) year from the date of conviction. Upon conviction of a
20 separate violation of this Section during the same period of required use of
21 an ignition interlock device, the Department shall revoke the person's
22 driving privilege for five (5) years from the date of conviction.

23 (2) Any person convicted of a violation of Subsection (f) hereof who
24 does not have a driver's license shall, in addition to any other penalty
25 provided by law, pay a fine of not less than Two Hundred Fifty Dollars
26 (\$250) or more than Five Hundred Dollars (\$500) per each such violation. In
27 the event that the person is unable to pay any such fine, the fine shall

1 become a lien against the motor vehicle used in violation of Subsection (f)
2 hereof and payment shall be made pursuant to Title 16 GCA, §7172.

3 (f) (1) It is unlawful to tamper with or to circumvent the operation of a
4 court-ordered ignition interlock device.

5 (2) It is unlawful for any person whose driving privilege is restricted
6 pursuant to this Section to request or solicit any other person to blow into an
7 ignition interlock device or to start a motor vehicle equipped with the device
8 for the purpose of providing the person so restricted with an operable motor
9 vehicle.

10 (3) It is unlawful to blow into an ignition interlock device or to start a
11 motor vehicle equipped with the device for the purpose of providing an
12 operable motor vehicle to a person whose driving privilege is restricted
13 pursuant to this Section.

14 (4) It is unlawful to knowingly lease or lend a motor vehicle to a
15 person who has had his or her driving privilege restricted as provided in this
16 Section, unless the vehicle is equipped with a functioning, certified ignition
17 interlock device. Any person whose driving privilege is restricted under a
18 condition of probation requiring an ignition interlock device shall notify any
19 other person who leases or loans a motor vehicle to him or her of such
20 driving restriction.

21 (g) Notwithstanding the provisions of this Section, if a person is
22 required to operate a motor vehicle in the course and scope of his or her
23 employment and if the vehicle is owned by the employer, the person may
24 operate that vehicle without installation of an approved ignition interlock
25 device if the employer has been notified of such driving privilege restriction
26 and if proof of that notification is with the vehicle. This employment
27 exemption does not apply, however, if the business entity which owns the

1 vehicle is owned or controlled by the person whose driving privilege has
2 been restricted.

3 (h) In addition to the penalties provided in this Section, a violation of
4 this Section is a traffic violation, punishable as a nonmoving violation as
5 provided in Title 16 GCA, Chapter 9.

6 **§ ~~18402~~ 92402. Ignition Interlock Devices, Certification; Warning**
7 **Label.**

8 (a) The Department of Revenue and Taxation shall certify or cause to
9 be certified the accuracy and precision of the breath-testing component of
10 the ignition interlock devices as required by ~~§18401~~ 92401 of this Article,
11 and shall publish a list of approved devices, together with rules governing
12 the accuracy and precision of the breath-testing component of such devices
13 as adopted by rule in compliance with ~~§18401~~ 92401 of this Article. The
14 cost of certification shall be borne by the manufacturers of ignition interlock
15 devices.

16 (b) No model of ignition interlock device shall be certified unless it
17 meets the accuracy requirements specified by rule of the Department.

18 (c) The Department of Revenue and Taxation shall design and adopt
19 by rule, a warning label which shall be affixed to each ignition interlock
20 device upon installation. The label shall contain a warning that any person
21 tampering, circumventing or otherwise misusing the device is guilty of a
22 violation of law and may be subject to civil liability.”

23 **Section 4. Effective Date.** This Act *shall* become immediately effective
24 upon enactment.