

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
143-35 (COR)	James. C. Moylan	AN ACT TO AMEND § 34.20, § 34.30, § 34.50, AND § 34.60 ALL OF CHAPTER 34, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE PENALTIES ESTABLISHED FOR AGGRAVATED ARSON, ARSON, NEGLIGENT BURNING, AND CRIMINAL MISCHIEF.	5/24/19 10:28 a.m.						

**I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session**

Bill No. *HB-35 (COE)*

Introduced by:

James. C. Moylan 

**AN ACT TO AMEND § 34.20, § 34.30, § 34.50, AND § 34.60
ALL OF CHAPTER 34, TITLE 9, GUAM CODE
ANNOTATED, RELATIVE TO THE PENALTIES
ESTABLISHED FOR AGGRAVATED ARSON, ARSON,
NEGLIGENT BURNING, AND CRIMINAL MISCHIEF.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that Chapter 34 of Title 9, Guam Code Annotated addresses criminal activity that
4 not only involves the damaging of personal or public property, but tends to be
5 criminal activity that has the potential of alluring minors to commit. The Chapter
6 addresses aggravated arson, arson, negligent burning, criminal mischief and
7 graffiti. The section on graffiti is thorough and addresses many aspects of fitted
8 sentences and appropriate penalties. However the other sections need some
9 modernization.

10 The legislation creates several consistencies among the other criminal acts,
11 including assuring that when it comes to minors, that parental involvement is
12 prevalent with the penalties. When a minor is convicted of aggravated arson,
13 arson, negligent burning or criminal mischief, that their parents or legal guardians
14 shall be jointly involved in assuring that both the penalties and any restitution in

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1 refurbishing, repairing and/or replacing the damaged property. The intent is to
2 reduce the recidivism in the minor repeating the crime.

3 Further, whether the convicted individual is a minor or an adult, that
4 community service shall be a requirement to assure the offender values the
5 importance of beautifying our island, despite their crime accomplishing the
6 opposite. If there is sentencing involved, the legislation would require the
7 completion of the community service prior to the commencement of the prison
8 time.

9 Lastly, other than stiffening the monetary penalties for the noted criminal
10 acts, the legislation would allow adult offenders to qualify for the work credit
11 program established in a prior public law, thus giving them an opportunity to
12 further give back to the community and earn credits for a reduced sentence. The
13 intent of the legislation is to focus more on establishing lessons versus extending
14 lengths of crimes. If these lessons can be instituted among juvenile offenders, than
15 opportunities to instill positivity and optimism for these minors would be
16 beneficial for both the individual and the community.

17 **Section 2.** § 34.20 of Chapter 34, Title 9, Guam Code Annotated is hereby
18 *amended* to read as follows:

19 **§ 34.20. Aggravated Arson; Defined & Punished.**

20 (a) A person is guilty of aggravated arson if he recklessly damages
21 any habitable property by means of fire or explosives in conscious disregard
22 of a substantial risk that at the time of such conduct a person may be in such
23 habitable property, whether or not a person is actually present.

24 (b) Aggravated arson is a second degree felony. In the case of
25 aggravated arson as a felony of the second degree, the court *shall* impose a
26 sentence of imprisonment of a minimum term of five (5) years and may
27 impose a maximum term of up to ten (10) years; the minimum term imposed

1 shall not be suspended nor may probation be imposed in lieu of the
2 minimum term nor shall parole ~~or work release~~ be granted before completion
3 of the minimum term. An individual convicted of aggravated arson shall
4 qualify for the work credit program, pursuant to § 81.10 of Chapter 81, Title
5 9, Guam Code Annotated, after serving a minimum of one (1) year of their
6 sentence. The sentence shall include a special parole term of not less than
7 three (3) years in addition to such term of imprisonment.

8 (c) Any adult or juvenile who is convicted under § 34.20, Title 9,
9 Guam Code Annotated shall be required to pay a fine of one thousand
10 dollars (\$1,000.00) for the first offense, one thousand five hundred
11 dollars (\$1,500.00) for the second offense and two thousand dollars
12 (\$2,000.00) for each subsequent offense.

13 (d) In the case of a minor who is convicted of a crime pursuant to §
14 34.20, Title 9, Guam Code Annotated, the parents or the legal guardian shall
15 be jointly and severally liable with the minor for the payment of all fines.
16 Failure of the parents or legal guardian to make payment will result in the
17 filing of a lien on the parents' or legal guardian's property to include the fine
18 and court costs.

19 (e) In addition to any punishment listed in subsection (c) of § 34.20,
20 the court shall order any violator to make restitution to the victim for
21 damages or loss caused directly or indirectly by the defendant's offense in
22 the amount or manner determined by the court. Furthermore, the person or
23 if a minor, his or her parents, shall re-paint or refurbish the property so
24 damaged, destroyed, removed, or defaced at such person's expense, under
25 the supervision of the affected property owner or a court representative.
26 Parents or legal guardians of any minor found to have violated this

1 subsection shall also be responsible for providing supervision as well as
2 paying for the fine if the minor is unable to do so.

3 (f) The person convicted of the crime pursuant to this section,
4 including minors, shall also perform a minimum of one hundred eighty
5 (180) hours but not to exceed three hundred sixty (360) hours of community
6 service. Parents or legal guardians of any minor found to have violated this
7 subsection shall also be responsible for providing supervision as well as
8 paying for the fine if the minor is unable to do so. If any sentencing is
9 imposed, the community service shall be completed before the person serves
10 their sentence.

11 **Section 3.** § 34.30 of Chapter 34, Title 9, Guam Code Annotated is hereby
12 *amended* to read as follows:

13 **§ 34.30. Arson; Defined & Punished.**

14 (a) A person is guilty of arson if under circumstances not amounting
15 to aggravated arson he starts a fire or causes an explosion, whether on his
16 own property or another's:

17 (1) with the intention of defrauding an insurer; or

18 (2) in reckless disregard of a risk that his conduct will damage
19 or destroy the property of another.

20 (b) Arson is a third degree felony. If an individual is imposed a
21 sentence of imprisonment, they shall qualify for the work credit
22 program, pursuant to § 81.10 of Chapter 81, Title 9, Guam Code
23 Annotated, immediately after starting their sentence.

24 (c) Any adult or juvenile who is convicted under § 34.30, Title 9,
25 Guam Code Annotated shall be required to pay a fine of five hundred
26 dollars (\$500.00) for the first offense, seven hundred fifty dollars

1 (\$750.00) for the second offense and one thousand dollars (\$1,000.00)
2 for each subsequent offense.

3 (d) In the case of a minor who is convicted of a crime pursuant to §
4 34.30, Title 9, Guam Code Annotated, the parents or the legal guardian shall
5 be jointly and severally liable with the minor for the payment of all fines.
6 Failure of the parents or legal guardian to make payment will result in the
7 filing of a lien on the parents' or legal guardian's property to include the fine
8 and court costs.

9 (e) In addition to any punishment listed in subsection (c) of § 34.30,
10 the court shall order any violator to make restitution to the victim for
11 damages or loss caused directly or indirectly by the defendant's offense in
12 the amount or manner determined by the court. Furthermore, the person or
13 if a minor, his or her parents, shall re-paint or refurbish the property so
14 damaged, destroyed, removed, or defaced at such person's expense, under
15 the supervision of the affected property owner or a court representative.
16 Parents or legal guardians of any minor found to have violated this
17 subsection shall also be responsible for providing supervision as well as
18 paying for the fine if the minor is unable to do so.

19 (f) The person convicted of the crimes pursuant to this section,
20 including minors, shall also perform a minimum of one hundred eighty
21 (180) hours but not to exceed three hundred sixty (360) hours of community
22 service. Parents or legal guardians of any minor found to have violated this
23 subsection shall also be responsible for providing supervision as well as
24 paying for the fine if the minor is unable to do so. If any sentencing is
25 imposed, the community service shall be completed before the person serves
26 their sentence.

1 **Section 4.** § 34.40 of Chapter 34, Title 9, Guam Code Annotated is hereby
2 *amended* to read as follows:

3 **§ 34.40. Negligent Burning; Defined & Punished.**

4 (a) A person is guilty of negligent burning if he:

5 (1) negligently starts a fire or causes an explosion whether on
6 his own property or another's, and thereby negligently endangers
7 human life or negligently places the property of another in danger of
8 damage or destruction; or

9 (2) having started a fire, whether negligently or not, and
10 knowing that its spread will endanger the life of property of another,
11 either fails to take reasonable measures to put out or control the fire,
12 or fails to give a prompt fire alarm.

13 (b) Negligent burning is a misdemeanor.

14 (c) Any adult or juvenile who is convicted under § 34.40, Title 9,
15 Guam Code Annotated shall be required to pay a fine of two hundred fifty
16 dollars (\$250.00) for the first offense, five hundred dollars (\$500.00) for the
17 second offense and one thousand dollars (\$1,000.00) for each subsequent
18 offense.

19 (d) In the case of a minor who is convicted of a crime pursuant to §
20 34.40, Title 9, Guam Code Annotated, the parents or the legal guardian shall
21 be jointly and severally liable with the minor for the payment of all fines.
22 Failure of the parents or legal guardian to make payment will result in the
23 filing of a lien on the parents' or legal guardian's property to include the fine
24 and court costs.

25 (e) In addition to any punishment listed in subsection (c) of § 34.40,
26 the court shall order any violator to make restitution to the victim for
27 damages or loss caused directly or indirectly by the defendant's offense in

1 the amount or manner determined by the court. Furthermore, the person or
2 if a minor, his or her parents, shall re-paint or refurbish the property so
3 damaged, destroyed, removed, or defaced at such person's expense, under
4 the supervision of the affected property owner or a court representative.
5 Parents or legal guardians of any minor found to have violated this
6 subsection shall also be responsible for providing supervision as well as
7 paying for the fine if the minor is unable to do so.

8 **Section 5.** § 34.60 of Chapter 34, Title 9, Guam Code Annotated is hereby
9 *amended* to read as follows:

10 **§ 34.50. Criminal Mischief; Defined.**

11 A person commits criminal mischief if:

12 (a) under circumstances not amounting to arson he damages or
13 destroys property with the intention of defrauding an insurer; or

14 (b) he intentionally tampers with the property of another and
15 thereby:

16 (1) recklessly endangers human life; or

17 (2) recklessly causes or threatens a substantial interruption
18 or impairment of any public utility service; or

19 (c) he intentionally damages the property of another; or

20 (d) he intentionally damages the motor vehicle of another.

21 **§ 34.60. Criminal Mischief; Punished.**

22 (a) A violation of subsections (b) or (d) of § 34.50 is a third
23 degree felony. If an individual is imposed a sentence of imprisonment,
24 they shall qualify for the work credit program, pursuant to § 81.10 of
25 Chapter 81, Title 9, Guam Code Annotated, immediately after starting
26 their sentence.

1 (b) A violation of subsection (a) of § 34.50 is a third degree felony if
2 the defendant's conduct causes or is intended to cause pecuniary loss in
3 excess of Five Hundred Dollars (\$500.00), a misdemeanor if the defendant's
4 conduct causes or is intended to cause pecuniary loss in excess of Fifty
5 Dollars (\$50.00), and a petty misdemeanor if the defendant's conduct causes
6 or is intended to cause pecuniary loss in excess of Twenty-four Dollars
7 (\$24.00). Otherwise, criminal mischief is a violation. If an individual is
8 imposed a sentence of imprisonment, they shall qualify for the work credit
9 program, pursuant to § 81.10 of Chapter 81, Title 9, Guam Code Annotated,
10 immediately after starting their sentence.

11 (c) Any adult convicted under subsection (c) of § 34.50, Title 9, Guam
12 Code Annotated, is guilty of a third degree felony ~~misdemeanor~~ punishable
13 by imprisonment for not less than ~~a mandatory forty eight (48) hours nor~~
14 ~~more than one year (1), with a maximum of three years (3),~~ and a fine of
15 one thousand two hundred fifty dollars (\$1,000.250.00) for the first offense,
16 one thousand five hundred dollars (\$1,500.00) for the second offense and
17 two one thousand dollars (\$2,1000.00) for each subsequent offense. If an
18 individual is imposed a sentence of imprisonment, they shall qualify for the
19 work credit program, pursuant to § 81.10 of Chapter 81, Title 9, Guam
20 Code Annotated, immediately after starting their sentence. Any juvenile
21 convicted of the crime in (c) of § 34.50, Title 9, Guam Code Annotated,
22 shall also be required to pay the fine identified in this subsection.

23 (d) Any adult or juvenile who is convicted under § 34.50 (a), (b), or
24 (d), Title 9, Guam Code Annotated shall be required to pay a fine of one
25 thousand dollars (\$1,000.00) for the first offense, one thousand five hundred
26 dollars (\$1,500.00) for the second offense and two thousand dollars
27 (\$2,000.00) for each subsequent offense.

1 (e) In the case of a minor who is convicted of any of the subsections
2 pursuant to § 34.50, Title 9, Guam Code Annotated, the parents or the legal
3 guardian *shall* be jointly and severally liable with the minor for the payment
4 of all fines. Failure of the parents or legal guardian to make payment will
5 result in the filing of a lien on the parents' or legal guardian's property to
6 include the fine and court costs. ~~Upon an application and finding of~~
7 ~~indigence, the court may decline to order fines against the minor or parents.~~

8 (f) In addition to any punishment listed in subsection (c) and (d), the
9 court *shall* order any violator to make restitution to the victim for damages
10 or loss caused directly or indirectly by the defendant's offense in the amount
11 or manner determined by the court. Furthermore, the person or if a minor,
12 his or her parents, *shall* re-paint or refurbish the property so damaged,
13 destroyed, removed, or defaced at such person's expense, under the
14 supervision of the affected property owner or a court representative.

15 (g) The person convicted of the crimes pursuant to this section,
16 including minors, *shall* also perform a minimum of one hundred eighty
17 (180) hours but not to exceed three hundred sixty (360) hours of community
18 service. Parents or legal guardians of any minor found to have violated this
19 subsection shall also be responsible for providing supervision as well as
20 paying for the fine if the minor is unable to do so. If any sentencing is
21 imposed, the community service shall be completed before the person serves
22 their sentence.

23 (h) The court may order that any person punished under § 34.60(c)
24 or § 34.70, Title 9, Guam Code Annotated, who is to be punished by
25 imprisonment, shall be confined on days other than days of regular
26 employment of the person, or on days other than school days if the
27 defendant is a minor, as determined by the court.

1 **Section 6. Severability.** If any provision of this Act or its application to
2 any person or circumstance is found to be invalid or contrary to law, such
3 invalidity *shall not* affect other provisions or applications of this Act that can be
4 given effect without the invalid provision or application, and to this end the
5 provisions of this Act are severable.

6 **Section 7. Effective Date.** The Act shall become effective upon enactment.