

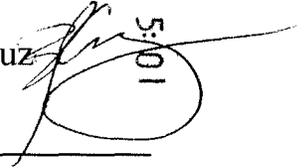
I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 Second (Regular) Session

2010 JUL -2 PM 5:01

Bill No. 436-30(corr)

Introduced by:

B.J.F. Cruz



AN ACT TO *AMEND* §§ 19.69, 19.70, AND 61.20 OF TITLE 9, GUAM CODE ANNOTATED; TO ADD NEW §§ 61.20.1, 28.90, 29.100, AND 28.101 TO TITLE 9, GUAM CODE ANNOTATED; AND TO *AMEND* § 3112.1 OF TITLE 17, GUAM CODE ANNOTATED; RELATIVE TO BULLYING, CYBERBULLYING, AND SEXTING.

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

3 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*

4 finds that there is both a concern and alarm among families, parents,
5 children, and our community about the growing contemporary problem of
6 not only actual physical assault but also emotional harassment, intimidation,
7 and mistreatment of weaker or vulnerable children or minors by others. This
8 bullying is reported to be on the rise and, in this electronic, digital, or
9 computer age is occurring more commonly and frequently on the Internet
10 and transmitted onto cellular phones and computers, which is now called
11 “cyberbullying.” *I Liheslaturan Guåhan* finds that bullying and
12 cyberbullying as forms of harassment and stalking can be addressed by
13 updating and amending our current related criminal laws.

14 *I Liheslaturan Guåhan* also finds that “sexting” has become a more
15 evident problem within our juvenile community as a result of the easy

1 accessibility of electronic devices among our youth community. The
2 teenage practices of sexting and posting sexual images online are nationwide
3 problems that have perplexed parents, school administrators, and law
4 enforcement officials. Prosecutors in several states have charged teenagers
5 who have engaged in these behaviors with criminal offenses, including
6 distribution of child pornography. Sexting, which is a new term of art, refers
7 to “the use of a cell phone to send sexually suggestive texts or emails with
8 nude or nearly nude photos.” Sexting has been on the increase in our
9 community, and has not only resulted in problems of itself, but it has been
10 linked to other problems and crimes within our youth community like
11 bullying, cyberbullying, assault, harassment, and even criminal sexual
12 conduct. Like the rest of the nation, Guam has had to charge juveniles with
13 other more serious criminal offenses like distribution of child pornography.
14 The *National Campaign to Prevent Teen and Unplanned Pregnancy*
15 conducted research that shows the following statistics with respect to
16 sexting: 39 percent of all teens have sent sexually suggestive texts; 48
17 percent of teens say they have received such messages; 71 percent of teen
18 girls and 67 percent of teen boys who have sent or posted sexually
19 suggestive content say they have sent or posted this content to a
20 boyfriend/girlfriend; 21 percent of teen girls and 39 percent of teen boys say
21 they have sent such content to someone they wanted to date or “hook up”
22 with; 38 percent of teens say they have had sexually suggestive text
23 messages, originally meant for someone else, shared with them; and 25
24 percent of teen girls and 33 percent of teen boys say they have had semi-
25 nude or nude images, originally meant for someone else, shared with them.
26 In an attempt to battle this growing problem, *I Liheslaturan Guåhan* enacts
27 this legislation addressing two different forms of sexting among our youth:

1 Illegal Use of a Computer or Telecommunications Device to Disseminate
2 Prohibited Materials Involving a Minor.

3 *I Liheslaturan Guåhan* further finds that there is a need to create a
4 diversionary program for first-time offending juveniles who can be charged
5 for sexting or posting of sexual images via electronic devices as a preventive
6 measure and means to educate juveniles about the severity of this type of
7 behavior, and the possible consequences for such a crime. *I Liheslaturan*
8 *Guåhan* wishes to establish an educational program that is intended to be an
9 alternative to prosecution for juveniles who are charged with a criminal
10 offense for posting sexually suggestive or sexually explicit photographs,
11 usually on the Internet. The educational program would include juveniles
12 who engage in the behavior commonly known as Sexting, in which sexually
13 suggestive or explicit pictures are transmitted via cell phones.

14 The bill would require the Office of the Attorney General, Family
15 Division, or whichever designated division of the Office of the Attorney
16 General that addresses matters involving juveniles in the community of
17 Guam, to incorporate such a diversionary program under its current services.
18 Such diversionary program would be similar to or incorporated under the
19 current Pre-Adjudicatory Diversionary Program that the Office of the
20 Attorney General currently utilizes. The program would require that the
21 Office of the Attorney General develop an educational program for juveniles
22 who commit an eligible offense as defined in this Act. The Office of the
23 Attorney General shall then consult with the Judiciary of Guam, Juvenile
24 Probation Division, to discuss and implement such educational program, to
25 include the same or similar conditions as the current Pre-Adjudicatory
26 Diversionary Program between the Office of the Attorney General and
27 Judiciary of Guam, Juvenile Probation Division. The Office of the Attorney

1 General shall be the sole agency responsible for the determination as to
2 whether a minor may be admitted into the diversionary program. A juvenile
3 who successfully completes the program would have the opportunity to
4 avoid prosecution, and any records relating to such an offense, upon
5 completion of the program, would be dismissed and expunged.

6 Admission to the program would be limited to juveniles who: (1) have
7 not previously been adjudicated delinquent for or convicted of a criminal
8 offense; (2) were not aware that their actions could constitute and did not
9 have the intent to commit a criminal offense; (3) may be harmed by the
10 imposition of criminal sanctions; and (4) would likely be deterred from
11 engaging in similar conduct in the future by completing the program.

12 *I Liheslaturan Guåhan* finds that such educational program will be
13 beneficial to the community of Guam, and more so, in the best interests of
14 the youth in our community as such program is designed to provide
15 information concerning: the legal consequences of and penalties for sexting
16 or posting sexual pictures online, including the applicable local and federal
17 statutes; the non-legal consequences of sexting or posting such pictures,
18 including, but not limited to, the effect on relationships, loss of educational
19 and employment opportunities, and being barred or removed from school
20 programs and extracurricular activities; how the unique characteristics of
21 cyberspace and the Internet can produce long-term and unforeseen
22 consequences for sexting and posting such photographs; and the connection
23 between bullying and cyber-bullying and juveniles sexting or posting sexual
24 images.

25 *I Liheslaturan Guåhan* further finds that the need to impose upon
26 retail stores which sell cellular telephone equipment or cellular telephone
27 equipment service contracts, the responsibility of providing informational

1 brochures about sexting to customers who purchase such equipment or
2 contracts, is vital in the prevention and education of sexting. The need for
3 active participation from these particular retail stores in providing such
4 informational brochures will ensure that purchasers of these devices are
5 educated up front about the illegal use of these devices and the consequences
6 of such illegal actions. This bill supplements Guam's consumer fraud act
7 making it an unlawful practice for any retail mercantile establishment to sell
8 cellular telephone equipment or to sell or renew cellular telephone service
9 contracts, unless the store encloses an informational brochure with such
10 equipment or contracts, that describes the dangers of sexting, the criminal
11 penalties that may be associated with sexting, and the names, addresses, and
12 telephone numbers of qualified organizations that can provide information to
13 the customer concerning responsible cellular telephone usage.

14 The bill directs the Office of the Attorney General, Consumer
15 Protection Division, to notify stores which sell cellular telephone equipment
16 and cellular telephone equipment service contracts, about the bill's
17 requirements by advertising it in Guam local newspapers. In addition, the
18 bill requires that *I Liheslaturan Guåhan* provide funding to the Office of the
19 Attorney General to advertise such information on a yearly basis, as well as
20 adequate funding for the Office of the Attorney General to prepare and
21 distribute information brochures about sexting to stores throughout Guam
22 for distribution to customers who purchase such equipment or contracts from
23 the stores.

24 **Section 2.** Section 19.69 of Title 9, Guam Code Annotated, is hereby
25 *amended* to read:

26 **“§ 19.69. Definitions.**

27

1 Unless otherwise indicated, as used in § 19.70:

2 (a) *Harasses* or *harassment* means a knowing and willful
3 course of conduct, whether physical, verbal, written, electronic,
4 telephonic, ~~written~~, via or by use of a computer, computer network,
5 computer system, telephone network, data network, text message,
6 instant message, or otherwise, directed at a specific person which
7 alarms, annoys, or distresses the person, and which serves no
8 legitimate purpose. Such course of conduct must be of a nature to
9 cause a reasonable person to suffer substantial emotional distress, and
10 must cause substantial emotional distress.

11 (b) *Course of conduct* means a pattern of conduct composed of
12 a series of acts over a period of time, however short, evidencing
13 continuity of purpose. Constitutionally and statutorily protected
14 activity, including but not limited to picketing as a result of a labor
15 dispute, is not included in this definition.

16 (c) *Credible threat* means any threat, physical or verbal, overtly
17 or subtly manifested, constituting a threat with the intent and apparent
18 ability to carry out the threat with the person who is the target of the
19 threat to reasonably fear for his or her safety or the safety of his or her
20 immediate family. Such threatening advance must be against the life
21 of, or a threat to cause bodily injury to, the person threatened or to a
22 member of his or her immediate family.

23 (d) Computer means any electronic, magnetic, optical,
24 electrochemical, or other high-speed data processing device
25 performing logical, arithmetic, or storage functions, and includes, all
26 computer equipment connected or related to such a device in a
27 computer system or computer network, but shall not include an

1 automated typewriter or typesetter, a portable hand-held calculator, or
2 other similar device.

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

6 (f) Computer system means a set of interconnected computer
7 equipment intended to operate as a cohesive system.”

8 **Section 3.** Section 19.70 of Title 9, Guam Code Annotated, is hereby
9 *amended* to read:

10 **“§ 19.70. Stalking.**

11 (a) A person is guilty of simple stalking if he or she willfully,
12 maliciously, and repeatedly, follows or ~~harasses~~ **harasses** another person or
13 who makes a credible threat with intent to place that person or a member of
14 his or her immediate family in fear of death or bodily injury.

15 (b) A person is guilty of advanced stalking if he or she violates
16 subsection (a) of this section when there is a temporary restraining order or
17 an injunction or both or any other court order in effect prohibiting the
18 behavior described in that subsection against the same party.

19 (c) A person is guilty of advanced stalking if he or she violates
20 subsection (a) of this section a second or subsequent time against the same
21 victim, within seven (7) years of a prior conviction under that subsection,
22 and involving an harassment or a credible threat of violence, as defined in
23 this § 19.69 of this Chapter.

24 (d) Simply stalking is a felony of the third degree.

25 (e) Advanced stalking is a felony of the second degree.

26 (f) This section shall not apply to conduct which occurs during labor
27 picketing.”

1 **Section 4.** Section 61.20 of Title 9, Guam Code Annotated, is hereby
2 *amended* to read:

3 **“§ 61.20 Harassment; Defined & Punished.**

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

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

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

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

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

20 (e) Every person who makes a telephone call, ~~or~~
21 transmission, or any transmission by use of a telephone network, data
22 network, text message, instant message, computer, computer network,
23 or computer system with intent to annoy and without disclosing his
24 true identity to the person answering the telephone or receiving the
25 telefax transmission or transmission received from any telephone
26 network, data network, text message, instant message, computer,
27 computer network, or computer system, whether or not conversation

1 or return transmission ensues from making the telephone call or the
2 transmission, is guilty of a misdemeanor.

3 (f) Any offense committed by use of a telephone, ~~or~~ telefax
4 machine, or any telephone network, data network, text message,
5 instant message, computer, computer network, or computer system as
6 set out in this section may be deemed to have been committed at
7 either the place at which the telephone calls, ~~or~~ telefax transmissions
8 , or any transmission by use of a telephone network, data network,
9 text message, instant message, computer, computer network, or
10 computer system were made or received. In the event that a customer
11 of a telephone service provider, wireless service provider, or an
12 internet service provider receives harassing telephone calls or
13 transmissions received via or by use of a telephone network, data
14 network, text message, instant message, computer, computer network,
15 or computer system, such customer may file an injunction complaint
16 under the name of John Doe, although the telephone service provider
17 may release the name, address, and telephone number of the plaintiff
18 to the Superior Court of Guam. The telephone service provider,
19 wireless service provider, or an internet service provider shall
20 disconnect all telephone services or computer or wireless services to
21 any subscriber who has violated the provisions of this section more
22 than one (1) time.

23 (g) Subsections (d) or (e) of this section are violated when the
24 person acting with intent to annoy makes a telephone call, ~~or~~ telefax
25 transmission, or any transmission by use of a telephone network, data
26 network, text message, instant message, computer, computer network,
27 or computer system requesting a return call or return transmission and

1 performs the acts prohibited under such subsections upon receiving
2 the return call or transmission.”

3 **Section 5.** A new Section 61.20.1 is hereby *added* to Chapter 61 of
4 Title 9, Guam Code Annotated to read as follows:

5 **“§ 61.20.1 Definitions.**

6 Unless otherwise indicated, as used in § 61.20:

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

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

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

19 **Section 6.** A new Section 28.90 is hereby added to Article 2, Chapter
20 28 of Title 9, Guam Code Annotated, to read as follows:

21 **“§ 28.90. Obscene, anonymous, harassing and threatening**
22 **communications by computer; Defined & Punished.**

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

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

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

3 (3) Threaten via the internet to commit a crime against any
4 person or property; or Cause obscene material to be delivered or
5 transmitted via the internet to a specific person after being requested
6 to desist from sending such material.

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

11 For purposes of this Article and sections therein, “obscene
12 material” means material that:

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

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

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

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

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

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

8 **Section 7.** A new Section 28.100 is hereby *added* to Article 2,
9 Chapter 28 of Title 9, Guam Code Annotated, to read as follows:

10 **“§28.100. Illegal Use of a Computer or Telecommunications**
11 **Device to Disseminate Prohibited Materials Involving a Minor-**
12 **“Sexting”; Crime Defined and Punished.**

13 (a) A minor is guilty of an offense of Illegal Use of a Computer
14 Telecommunications Device Involving a Minor, otherwise known as
15 “Sexting”, if the minor, by use of a computer or any
16 telecommunications device, recklessly or knowingly creates, receives,
17 exchanges, sends, disseminates, transmits or possesses a photograph,
18 video, depiction or other material that shows himself or herself, or of
19 another minor, in a state of nudity.

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

23 (c) Applicability.--This section shall not apply to the use of a
24 computer or a telecommunications device to transmit or distribute a
25 photograph or other depiction involving sexual intercourse, deviate
26 sexual intercourse, sadism, masochism or masturbation. This section

1 does not prohibit a person guilty under this section to be charged with
2 other chargeable criminal sex offenses under Guam law.

3 (d) An offense under this section constitutes a “status offense”.
4 Any minor found to commits an offense under this section shall be
5 found guilty of illegal use of a telecommunications device involving a
6 minor in a state of nudity, a delinquent act that would be a
7 misdemeanor if it could be committed as an adult.

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

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

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

20 (1) As used herein, “eligible offense” means an offense
21 chargeable under this Section where:

22 (A)the facts of the case involve the creation,
23 exhibition or distribution without malicious intent of a
24 photograph depicting nudity as defined in that section
25 through the use of a telecommunications device or a
26 computer; and

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

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

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

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

5 (B) were not aware that their actions could
6 constitute and did not have the intent to commit a
7 criminal offense;

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

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

12 (4) The educational program shall provide information
13 concerning:

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

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

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

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

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

6 **Section 8.** A new Section 28.101 is hereby *added* to Article 2,
7 Chapter 28 of Title 9, Guam Code Annotated, to read as follows:

8 **“§ 28.101. Illegal Use of a Computer or Telecommunications**
9 **Device to Disseminate Prohibited Materials Involving a Minor-**
10 **“Sexting”; Mandatory Distribution of Information Brochure**
11 **about “Sexting” by Retail Stores Who Sell Cellular Telephone**
12 **Equipment or Cellular Telephone Equipment Service Contracts.**

13 (a) Definitions. As used in this Section:

14 (1) “Cellular telephone equipment” or “equipment” means
15 a wireless telephone handset used in conjunction with wireless
16 telephone service.

17 (2) “Wireless telephone service” means commercial
18 mobile radio service, as defined in subsection (d) of section 332
19 of the Communications Act of 1934 (47 U.S.C. s.332).

20 (3) “Sexting” is defined in §28.100(a) of Title 9 G.C.A.

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

24 (b) It shall be an unlawful practice for any store or other retail
25 mercantile establishment to sell cellular telephone equipment to an
26 individual, or to sell a contract for cellular telephone equipment
27 service to an individual, or to renew a contract for cellular telephone

1 equipment service with an individual, unless the store encloses an
2 informational brochure with such equipment or contract that informs
3 the individual about the dangers of the practice known as “sexting.”

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

15 (2) The Office of the Attorney General, Consumer
16 Protection Division, the Guam Police Department, and the
17 Department of Revenue and Taxation shall notify all stores that
18 sell cellular telephone equipment or cellular telephone
19 equipment service contracts, of the requirements of this Act by
20 advertising in local newspapers of general circulation on Guam,
21 and shall prepare an information brochure on “sexting” and
22 make copies available to all such stores.

23 (3) The Office of the Attorney General shall annually
24 report to the Legislature on the effectiveness of the brochure
25 preparation and distribution required by subsection c. of this
26 section.

1 (c) The owners of any store other retail mercantile
2 establishment which violates subsection (b) shall be subject to the
3 penalty of fines not to exceed \$1,000.00 per each violation, and if
4 applicable be subject to the sentence imposed for corporations under
5 §80.16 of Title 9 G.C.A.”

6 **Section 9.** Section 3112.1 of Title 17, Guam Code Annotated, is
7 hereby *amended* to read:

8 **“§ 3112.1. Same: Policy Against Bullying.**

9 (a) As used in this Section:

10 (1) ‘at school’ means in a classroom, elsewhere on or
11 immediately adjacent to school premises, on a school bus or
12 other school-related vehicle, at an official school bus stop, or at
13 a school-sponsored activity or event whether or not it is held on
14 school premises.

15 (2) ‘harassment, intimidation, or bullying’ means any
16 gesture or written, verbal, or physical act that a reasonable
17 person under the circumstances should know will have the
18 effect of harming a pupil or damaging his or her property or
19 placing a pupil in reasonable fear of harm to his or her person
20 or damage to his or her property, or that has the effect of
21 insulting or demeaning any pupil or group of pupils in such a
22 way as to disrupt or interfere with the school’s educational
23 mission or the education of any pupil. ‘Harassment,
24 intimidation, or bullying’ includes, but is not limited to, such a
25 gesture or written, verbal, or physical act that is reasonably
26 perceived as being motivated by a pupil’s religion, race, color,
27 national origin, age, sex, sexual orientation, disability, height,

1 weight, or socioeconomic status, or by any other distinguishing
2 characteristic.

3 (3) “Cyberbullying” means the use of any electronic
4 communication device to harass, intimidate or bully as defined
5 in the above subsection (2).

6 (b) The Guam Education Policy Board (the ‘Board’) shall
7 adopt a policy prohibiting “harassment, intimidation, or
8 bullying” and “cyberbullying” at school. The content of the
9 policy shall be determined by the Board but shall contain at
10 least the components in Subsection (3). The policy shall be
11 adopted through a process that includes representation of
12 parents or guardians, pupils, teachers, staff, administrators,
13 volunteers, and community representatives.

14 (c) The policy shall include at least each of the following
15 components:

16 (1) A statement prohibiting “harassment,
17 intimidation, or bullying” and “cyberbullying” of a pupil.

18 (2) A definition of “harassment, intimidation, or
19 bullying” and “cyberbullying” that includes at least the
20 acts described in the definition in this Section.

21 (3) A description of the type of behavior expected
22 from each pupil.

23 (4) Consequences and appropriate remedial action
24 for a person who commits an act of “harassment,
25 intimidation, or bullying” and “cyberbullying”.

26 (5) A procedure for reporting an act of
27 “harassment, intimidation, or bullying” and

1 “cyberbullying”, including a provision that permits a
2 person to report an act of “harassment, intimidation, or
3 bullying” and “cyberbullying” anonymously. However,
4 this Subsection shall *not* be construed to permit formal
5 disciplinary action solely on the basis of an anonymous
6 report.

7 (6) A procedure for prompt investigation of reports
8 of violations and complaints, identifying either the
9 principal or the principal's designee as the person
10 responsible for the investigation.

11 (7) The range of ways in which a school will
12 respond once an incident of “harassment, intimidation, or
13 bullying” and “cyberbullying” is identified.

14 (8) A statement that prohibits reprisal or retaliation
15 against any person who reports an act of “harassment,
16 intimidation, or bullying” and “cyberbullying”, and the
17 consequences and appropriate remedial action for a
18 person who engages in that type of reprisal or retaliation.

19 (9) Consequences and appropriate remedial action
20 for a person found to have falsely accused another as a
21 means of retaliation or as a means of “harassment,
22 intimidation, or bullying” and “cyberbullying”.

23 (10) A statement of how the policy is to be
24 publicized including notice that the policy applies to
25 participation in school-sponsored activities.

26 (11) A school employee, pupil, or volunteer shall
27 not engage in reprisal, retaliation, or false accusation

1 against a victim, witness, or one with reliable information
2 about an act of “harassment, intimidation, or bullying”
3 and “cyberbullying”.

4 (12) A school employee or volunteer who has
5 witnessed, or has reliable information that a pupil has
6 been subjected to “harassment, intimidation, or bullying”
7 and “cyberbullying”, whether verbal or physical, *shall*
8 report the incident to the appropriate school official
9 designated by the Board policy.

10 (13) A school employee who promptly reports an
11 incident of “harassment, intimidation, or bullying” and
12 “cyberbullying” to the appropriate school official
13 designated by the Board policy, and who makes this
14 report in compliance with the procedures in the policy
15 prohibiting “harassment, intimidation, or bullying” and
16 “cyberbullying” is not liable for damages arising from
17 any failure to remedy the reported incident.

18 (d) The Board shall adopt the policy under this Section
19 and transmit a copy of its policy to the Superintendent of
20 Education by February 28, 2004.

21 (e) The Board shall ensure that notice of the policy under
22 this Section is included in any publication that sets forth the
23 comprehensive rules, procedures, and standards of conduct for
24 all schools, and in its pupil handbooks.

25 (f) Public schools are required to form “bullying” and
26 “cyberbullying” prevention task forces; implement prevention,
27 intervention, and remediation programs; and explore other

1 initiatives that involve the school community, law enforcement,
2 assistance organizations, and community members. School
3 community is defined as parents or guardians, pupils, teachers,
4 staff, and administrators.

5 (g) Each school shall do all of the following:

6 (1) Provide training on the school's "harassment,
7 intimidation, or bullying" and "cyberbullying" policies to
8 the school community and volunteers who have
9 significant contact with pupils.

10 (2) Develop a process for discussing the
11 "harassment, intimidation, or bullying" and
12 "cyberbullying" policy with pupils as part of the
13 curriculum.

14 (h) A school shall incorporate information regarding its
15 policy against "harassment, intimidation, or bullying" and
16 "cyberbullying" into its employee training program.

17 (i) This Section does not prevent a victim from seeking
18 redress under any other available law, either civil or criminal.
19 This Section does not create or alter any tort liability.

20 (j) The Board shall establish rules for appropriate
21 disciplinary action for the Department of Education personnel
22 who do not comply with the policy prohibiting harassment,
23 intimidation, or bullying.

24 (k) "Harassment, Intimidation, or Bullying" and
25 "Cyberbullying" are **CRIMINAL IN NATURE** and any of
26 these actions can constitute a criminal offense that is chargeable
27 under Guam Law."

1 **Section 10. Severability.** If any provision of this Law or its
2 application to any person or circumstance is found to be invalid or contrary
3 to law, such invalidity shall not affect other provisions or applications of this
4 Law which can be given effect without the invalid provisions or application,
5 and to this end the provisions of this Law are severable.

6 **Section 11. Effective Date.** This Act shall be effective upon
7 enactment.

8