

I MINA'TRENTAI DOS NA LIHESLATURAN GUĀHAN

2013 () Regular Session

Bill No. 188-32 (col)

Introduced by:

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B.J.F. Cruz

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AN ACT TO ADD A NEW § 80.50 TO ARTICLE 2, CHAPTER 80, TITLE 9 GUAM CODE ANNOTATED KNOWN AS THE JUSTICE SAFETY VALVE ACT OF 2013 RELATIVE TO EMPOWERING THE COURTS OF GUAM TO DEPART FROM APPLICABLE MANDATORY MINIMUM SENTENCES UNDER SPECIFIC CONDITIONS, AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. Taking a cue from recent congressional efforts to save taxpayer dollars by reserving scarce prison beds for the most dangerous offenders—efforts culminating in the introduction in both houses of the U.S. Congress of the “The Justice Safety Valve Act of 2013,” (S. 619; HR 1695)—*I Liheslaturan Guāhan* seeks a similar “safety valve” at the territorial level, thereby allowing Guam courts to likewise impose sentences below the mandatory minimum sentence under specific conditions. The federal Act marks a national embrace of similar sentencing safety valves that have been enacted by legislatures in some eight states and counting. Like its state counterparts, the federal legislation is a sound way to reduce prison populations and save money, while at the same time protecting public safety. The federal Act seeks only to codify what has been described as an “common-sense” understanding that while mandatory minimum sentences may be appropriate in *many* cases, they are certainly not so in *every* case, especially those cases involving nonviolent offenders.

I Liheslaturan Guāhan finds that giving courts more flexibility in sentencing will only improve upon our justice system, as scarce prison beds will be reserved first and foremost to keep the public safe from truly violent offenders. *I Liheslaturan Guāhan* further finds that legislative bodies across the United States have too often moved in the mistaken policy direction of imposing new mandatory minimum sentences, unsupported by evidence, while failing to re-authorize and adequately fund crucial alternative programs designed to, among other things, rehabilitate prisoners so that they may be released to rejoin their communities as contributing members thereof. As Senator Patrick Leahy said

1 upon the introduction of the federal “Justice Safety Valve Act of 2013,” “[o]ur reliance on mandatory
2 minimums has been a great mistake. It is time for us to let judges go back to acting as judges and
3 making decisions based on the individual facts before them. A one-size-fits-all approach to sentencing
4 does not make us safer.” In other words, *I Liheslaturan Guåhan* intends not to require Guam judges to
5 impose shorter sentences, but rather only to authorize them to depart below a statutory mandatory
6 minimum sentence after finding, among other things, that providing a particular defendant a shorter
7 sentence will not jeopardize public safety. Put plainly, in cases where the mandatory minimum does
8 not account for the offender’s limited role in a crime, or other relevant factors, judges would be
9 allowed to consider those factors and narrowly tailor more appropriate sentences in such cases.

10 **Section 2. A new Section 80.50, Article 2, Chapter 80, 9 Guam Code Annotated is hereby**
11 **added to read as follows:**

12 “§80.50. **Title.** This Section shall be known and may be cited as Justice Safety Valve Act of
13 2013.

14 **§80.50.1. Sentencing.**

15 (A) Notwithstanding any other provision of law, when sentencing a person convicted of a
16 violation for which there is a mandatory minimum sentence, but which did not:

17 (1) Include the use, attempted use or threatened use of serious physical force by the
18 defendant against another person or result in the serious physical injury of another
19 person by the defendant; or

20 (2) Involve any sexual contact offense by the defendant against a minor (other than an
21 offense involving sexual conduct where the victim was at least 13 years old and the
22 offender was not more than four years older than the victim and the sexual conduct was
23 consensual);

24 (B) The court may depart from the applicable mandatory minimum sentence if the court finds
25 substantial and compelling reasons on the record that, in giving due regard to the nature of the crime,
26 history and character of the defendant and his or her chances of successful rehabilitation that:

27 (1) Imposition of the mandatory minimum would result in substantial injustice to the
28 defendant;

29 (2) The mandatory minimum sentence is not necessary for the protection of the public.

30 **§80.50.2. Exceptions.** Section 80.50.1 of this Article shall not apply if the court finds that:

31 (1) The individual has a conviction for the same offense during the ten-year period prior
32 to the commission of the offense;

33 (2) The individual intentionally uses a firearm in a manner that causes physical injury

1 during the commission of the offense; or

2 (3) The individual was the leader, manager, or supervisor of others in a continuing
3 criminal enterprise.

4 **§80.50.3. Reporting.** Upon departing from mandatory minimum sentences, judges shall report
5 to Judicial Council which shall, one year following the enactment of this statute and annually
6 thereafter, make available in electronic form and on the World Wide Web, a report as to the number of
7 departures from mandatory minimum sentences made by each judge of the Superior Court of Guam.

8 **§80.50.4. Reinvestment.** Twenty-five (25) percent of the savings realized as a result of this act
9 shall revert to the general fund to advance evidence-based practices shown to reduce recidivism.”

10 **Section 3. Severability.** The provisions outlined in this Act are declared to be separate and
11 severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Act,
12 or the invalidity of the application thereof to any person or circumstance shall not affect the validity of
13 the remainder of this Act, or the validity of its application to other persons or circumstances.

14 **Section 4. Effective Date.** The provisions outlined in this Act shall become effective
15 immediately upon passage.