

I MINA 'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
Informational Briefing/ Oversight Hearing / Roundtable Hearing


STANDING COMMITTEE / SENATOR	HEARING	COMMITTEE REPORT	HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
Committee on Health, Tourism, Historic Preservation, Land, and Justice	Informational Briefing	Right to Self Defense on Guam	6/15/20 9:00 a.m.	11/9/20 11:09 a.m.	



SENATOR THERESE M. TERLAJE

Committee on Health, Tourism, Historic Preservation, Land and Justice
I Mina' trentai Singko na Liheslaturan Guåhan
35th Guam Legislature

November 3, 2020

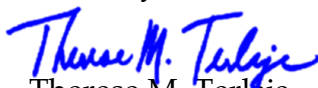
The Honorable Régine Bisco Lee 
Chairperson, Committee on Rules
I Mina' Trentai Singlo na Liheslaturan Guåhan
163 Chalan Santo Papa
Hagåtña, Guam 96910

RE: Committee Report on Informational Forum/Briefing on the Right to Self Defense on Guam.

Håfa Adai Chairperson Lee:

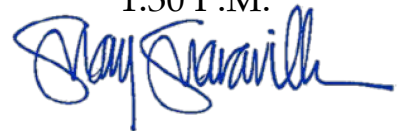
Transmitted herewith from the Committee on Health, Tourism, Historic Preservation, Land and Justice is the Committee Report on the June 15, 2020 Informational Forum/Briefing on the Right to Self Defense on Guam.

Sincerely,


Therese M. Terlaje

**COMMITTEE ON RULES
RECEIVED:**

November 3, 2020
1:30 P.M.





SENATOR THERESE M. TERLAJE

Committee on Health, Tourism, Historic Preservation, Land and Justice

I Mina' trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

COMMITTEE REPORT

INFORMATIONAL FORUM/BRIEFING

on

THE RIGHT TO SELF-DEFENSE ON GUAM

by Senator Therese M. Terlaje

Mailing Address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

Office Address: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Tel: (671) 472-3586 | Fax: (671) 969-3590 | Email: senatorterlajeguam@gmail.com | www.senatorterlaje.com



Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Re: FIRST NOTICE OF PUBLIC HEARING- Monda, June 15, 2020 beginning at 9:00 a.m.

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Jun 8, 2020 at 8:25 AM

To: Speaker's Office <speaker@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatorcnelson@guamlegislature.org>, Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>, "Office of Senator Kelly Marsh (Taitano), PhD." <office.senatorkelly@guamlegislature.org>, Senator Regine Biscoe Lee <senatorbiscoelee@guamlegislature.org>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, Senator Therese Terlaje <senatorterlajeguam@gmail.com>, Senator Clynt Ridgell <sen.cridgell@teleguam.net>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, Senator Sabina Perez <office@senatorperez.org>, Senator Wil Castro <wilcastro671@gmail.com>, Senator Louise Borja Muna <senatorlouise@gmail.com>, Senator Telo Taitague <senatortelot@gmail.com>, Senator James Moylan <senatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>
Cc: phnotice@guamlegislature.org, Guam MIS <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>, Ibarra Hernandez <ihernandez@guamlegislature.org>

PLEASE NOTE FIRST NOTICE RESENT WITH CORRECTED EMAIL TITLE. "MONDAY" MISSING "Y" IN EMAIL TITLE.

--

Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

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website: www.senatorterlaje.com

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On Mon, Jun 8, 2020 at 7:49 AM Senator Therese Terlaje <senatorterlajeguam@gmail.com> wrote:

MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje, Chairperson
Committee on Health, Tourism, Historic Preservation, Land, and Justice

Date: June 08, 2020

Subject: **NOTICE of Public Hearing** – Monday, June 15, 2020 beginning at 9:00 a.m.

Håfa Adai! The Committee on Health, Tourism, Historic Preservation, Land and Justice will convene virtual public hearings on **Monday, June 15, 2020 beginning at 9:00 a.m.** on the following agenda items:

9:00 a.m.:

- Informational Forum on the *Right to Self-Defense on Guam*.
- **Bill 47-35 (COR)**- Joe S. San Agustin- AN ACT TO AMEND §§ 7.111 AND 7.112 OF ARTICLE 5; AND § 7.86(b)(2)(A) OF ARTICLE 4, ALL OF CHAPTER 7, TITLE 9, GUAM CODE ANNOTATED; RELATIVE TO EXPANDING THE “CASTLE DOCTRINE” JUSTIFICATION FOR ACTS OF SELF DEFENSE AND ELIMINATING THE REQUIREMENT OF RETREATING BEFORE THE USE OF FORCE IN THE FACE OF IMMINENT DANGER. Bill link: [http://www.guamlegislature.com/Bills_Introduced_35th/Bill%20No.%2047-35%20\(COR\).pdf](http://www.guamlegislature.com/Bills_Introduced_35th/Bill%20No.%2047-35%20(COR).pdf)
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We look forward to your participation. Due to Public Health Emergency restrictions, the hearing will be conducted virtually by remote broadcast only.

1. Written testimony may be submitted via email to senatorterlajeguam@gmail.com or via hand delivery or mail to the Office of Senator Therese M. Terlaje, Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910 no later than 5 pm on May 20.
2. **Individuals who wish to provide live or pre-recorded oral/virtual testimony (maximum of 5 minutes) must register with the committee no later than 1 pm on June 11, 2020, via email at**

senatorterlajeguam@gmail.com with their full name, contact number, and email address and must comply with legislative rules for this format.

3. In compliance with the ADA, individuals requiring special accommodations or services should contact us at (671) 472-3586 or by email to senatorterlajeguam@gmail.com.

All testimony will be included in the Committee Reports for each agenda item and published on the guamlegislature.org website. You can watch the hearing live on *TV Channel 21GTA or Channel 117/60.4 Docomo*; or via http://www.guamlegislature.com/live_feed.htm. A recording of the hearing will be available on YouTube at [Guam Legislature Media](#) after the hearing.

Si Yu'os Ma'åse'!

--

Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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Senator Therese Terlaje <senatorterlajeguam@gmail.com>

FIRST NOTICE OF PUBLIC HEARING- Monday, June 15, 2020 beginning at 9:00 a.m.

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Jun 8, 2020 at 7:54 AM

To: Speaker's Office <speaker@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatorcnelson@guamlegislature.org>, Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>, "Office of Senator Kelly Marsh (Taitano), PhD." <office.senatorkelly@guamlegislature.org>, Senator Regine Biscoe Lee <senatorbiscoelee@guamlegislature.org>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, Senator Therese Terlaje <senatorterlajeguam@gmail.com>, Senator Clynt Ridgell <sen.cridgell@teleguam.net>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, Senator Sabina Perez <office@senatorperez.org>, Senator Wil Castro <wilcastro671@gmail.com>, Senator Louise Borja Muna <senatorlouise@gmail.com>, Senator Telo Taitague <senatortelot@gmail.com>, Senator James Moylan <senatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>

Cc: phnotice@guamlegislature.org, Guam MIS <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>, Ibarra Hernandez <ihernandez@guamlegislature.org>

Bcc: Bruce Hill <pacificjournalist@gmail.com>, Desk Editor <deskeditor@postguam.com>, Guam PDN <news@guampdn.com>, Guam Progress <guamprogress@yahoo.com>, Jason Salas <jason@kuam.com>, Jerick Sablan <jpsablan@guampdn.com>, John Oconor <john@postguam.com>, K57 <news@k57.com>, KISH <kstokish@gmail.com>, KPRG <admin.kprg@gmail.com>, KPRG Guam <pdkprg@gmail.com>, Kelly Park <kcn.kelly@gmail.com>, Manny Cruz <cruzma812@gmail.com>, Mar-Vic Cagurangan <publisher@pacificislandtimes.com>, Maria Louella Losinio <louella.losinio@gmail.com>, Pacific Island Times <pacificislandtimes@gmail.com>, Patti Rodriguez <parroyo@spbg Guam.com>, Sabrina Salas <sabrina@kuam.com>, Sorensen Pacific Broadcasting <news@spbg Guam.com>, Steve Limtiaco <slimtiaco@guampdn.com>, The Post Editor in Chief <editor@postguam.com>, Troy Torres <troy@kanditnews.com>, "akaur@gannett.com" <akaur@gannett.com>, "bryan@mvariety.com" <bryan@mvariety.com>, "businesseditor@glimpsesofofguam.com" <businesseditor@glimpsesofofguam.com>, "carlsonc@pstripes.osd.mil" <carlsonc@pstripes.osd.mil>, "cherrie@mvariety.com" <cherrie@mvariety.com>, "dcrisost@guam.gannett.com" <dcrisost@guam.gannett.com>, "dmgeorge@guampdn.com" <dmgeorge@guampdn.com>, "editor@saipantribune.com" <editor@saipantribune.com>, "emmanuel@mvariety.com" <emmanuel@mvariety.com>, "guam@pstripes.osd.mil" <guam@pstripes.osd.mil>, "heugenio@guampdn.com" <heugenio@guampdn.com>, "junhan@mvariety.com" <junhan@mvariety.com>, "life@guampdn.com" <life@guampdn.com>, "lifestyleeditor@glimpsesofofguam.com" <lifestyleeditor@glimpsesofofguam.com>, "mabuhaynews@yahoo.com" <mabuhaynews@yahoo.com>, michael ko <gktv23@hotmail.com>, "parroyo@k57.com" <parroyo@k57.com>, "pattiontheradio@yahoo.com" <pattiontheradio@yahoo.com>, "publisher@glimpsesofofguam.com" <publisher@glimpsesofofguam.com>, "raygibsonshow@gmail.com" <raygibsonshow@gmail.com>, "rlimtiaco@guampdn.com" <rlimtiaco@guampdn.com>, Kevin Kerrigan <kevin@spbg Guam.com>, andrea@k57.com, "Leevin T. Camacho" <lcamacho@guamag.org>, "Stephanie E. Mendiola" <smendiola@oagguam.org>, Stephen Hattori <sphattori@guampdsc.org>, Guam Bar Association <info@guambar.org>, Curtis@vandevelde.attorney, stephen ignacio <stephen.ignacio@gpd.guam.gov>, chief@gpd.guam.gov, [REDACTED]@gmail.com, [REDACTED]@gmail.com, TRESSA PEREZ DIAZ <diazt@triton.uog.edu>, Eddy Reyes [REDACTED]@gmail.com, Maya at GCASAFV <guamcoalition@guamcoalition.org>, varoguam1@yahoo.com, Jon Fernandez <jonfernandez@gdoe.net>, Melanie Brennan <melanie.brennan@dya.guam.gov>, [REDACTED]@yahoo.com, bobcamacho@hotmail.com, krisinda.aguon@dya.guam.gov, inquiries@sanctuaryguam.com, genic1@hotmail.com, "Leonguerrero, Franklin P CIV DLA DISTRIBUTION (US)" <franklin.leonguerrero@dla.mil>, Linda Rodriguez <Linda.Rodriguez@dphss.guam.gov>, Carissa Pangelinan <Carissa.pangelinan@gbhwc.guam.gov>, Theresa Arriola <theresa.arriola@gbhwc.guam.gov>, executive@manelu.org, [REDACTED]@gmail.com, [REDACTED]@gdoe.net, pfcop@gdoe.net, [REDACTED]@gdoe.net, tataitague@gdoe.net, Laura Taisipic <lktaisipic@gdoe.net>, ysgabriel@gdoe.net, healing.hearts@mail.gbhwc.guam.gov, ericahse@teleguam.net, AyudaMicronesia@gmail.com, islandgirlpower671@gmail.com, [REDACTED]@gmail.com, Patricia at GCASAFV <patricia@guamcoalition.org>, patricia.taimanglo@doc.guam.gov, Mark Perez <mark.perez@doc.guam.gov>, Michael Quinata <michael.quinata@doc.guam.gov>, Carol Fitch Baulos <[REDACTED]@gmail.com>, Jon Junior M Calvo <jon.calvo@guam.gov>

MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje, Chairperson
Committee on Health, Tourism, Historic Preservation, Land, and Justice

Date: June 08, 2020

Subject: **NOTICE of Public Hearing** – Monday, June 15, 2020 beginning at 9:00 a.m.

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Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice

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35th Guam Legislature

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website: www.senatorterlaje.com

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 **First Notice of Public Hearings_June 15, 2020_TMT.pdf**
438K



SENATOR THERESE M. TERLAJE

Committee on Health, Tourism, Historic Preservation, Land and Justice
I Mina' trentai Singko na Liheslaturan Guåhan
35th Guam Legislature

MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje, Chairperson
Tmt
Committee on Health, Tourism, Historic Preservation, Land and Justice

Date: June 08, 2020

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Mailing Address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

Office Address: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

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PERMITS OR ENCOURAGES THE MINOR CHILD TO COMMIT A FELONY OR MISDEMEANOR CRIME.

- **Bill No. 310-35 (COR)** – Telena C. Nelson - AN ACT TO ADD A NEW CHAPTER 93 TO TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO HOLDING PARENTS ACCOUNTABLE FOR THE HARMFUL ACTIONS OF THEIR CHILDREN SHALL BE CITED AS THE “PARENT ACCOUNTABILITY ACT OF 2020.”
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- **Bill No. 278-35 (COR)** - Committee on Rules / By request of *I Maga'hågan Guåhan*, the Governor of Guam, in accordance with the Organic Act of Guam. AN ACT TO AMEND SUBSECTION (b) OF §60.80, CHAPTER 60, TITLE 8 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROHIBITING PLEA DEALS WITHOUT REASONABLE PROOF OF VICTIM NOTIFICATION.

We look forward to your participation. Due to Public Health Emergency restrictions, the hearing will be conducted virtually by remote broadcast only.

1. Written testimony may be submitted via email to senatorterlajeguam@gmail.com or via hand delivery or mail to the Office of Senator Therese M. Terlaje, Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910 no later than 5pm on May 20.
2. Individuals who wish to provide live or pre-recorded oral/virtual testimony (maximum of 5 minutes) must register with the committee no later than 1pm on June 11, 2020, via email at senatorterlajeguam@gmail.com with their full name, contact number and email address and must comply with legislative rules for this format.
3. In compliance with the ADA, individuals requiring special accommodations or services should contact us at (671) 472-3586 or by email to senatorterlajeguam@gmail.com

All testimony will be included in the Committee Reports for each agenda item and published on the guamlegislature.org website. You can watch the hearing on *TV Channel 21GTA or Channel 117/60.4 Docomo*; or via http://www.guamlegislature.com/live_feed.htm . A recording of the hearing will be available on YouTube at [Guam Legislature Media](#) after the hearing.

Si Yu'os Ma'åse'!

CURRENCY EXCHANGE RATES	Keep posted and get more data and details online. Log on to see real time market data with our stock market tool at postguam.com/stock_market .						
On Jun. 5, \$1 was worth:	47.747 PHP	117.35 JPY	1,210.91 KRW	33.569 TWD	33.569 CNY	1.4556 AUD	0.9188 EUR

Pandemic aid assists reopenings at mall

By Lannie Walker
lannie@postguam.com

Tenants at local shopping centers are struggling as the island makes a shaky attempt at reopening stores and restaurants during the COVID-19 pandemic.

At the Micronesia Mall, Phil Schrage, senior vice president of group operations and leasing at Goodwind Development Corp., the mall's parent company, said 120 tenants have received benefits under the mall's COVID-19 Assistance Program.

Tenants that were not in default were not charged rent during the time the

mall was closed by government order from March 20 through May 10. Rent discounts were extended to tenants not in default for the months of May, June and July.

"I can say that we are glad to have been able to extend meaningful assistance to our tenants during these challenging times," Schrage told The Guam Daily Post on Friday.

Of the 120 mall tenants who have received the assistance, all but three have reopened, according to Schrage.

"Even though the mall has reopened, the discounted rent and fees will continue to help our valued stores and restaurants," said Schrage.



MICRONESIA MALL: Shoppers wait in line to shop at the ROSS store at Micronesia Mall in Dededo on Sunday, May 24. David Castro/The Guam Daily Post

Fewer hours, less pay, more anxiety greet returning workers

By Tony Romm and Jacob Bogage
The Washington Post

The local library near McHenry, Ill., is slashing Helaine Oleksy's hours.

At a country club near Latrobe, Pennsylvania, Claudia Martin is worried whether she'll earn enough in tips to make ends meet.

And at a luxury hotel in Miami, Iracema Arrieta is cleaning more rooms than usual - without much of a

boost to her pay.

As millions of Americans return to work amid the worst economic crisis in a generation, they're unexpectedly discovering their old positions are far more burdensome than they used to be. Their hours have been cut, their pay has been slashed and their responsibilities are now magnitudes greater. And their job security - despite President Donald Trump's recent proclamations about an economy on the mend

- remains anything but guaranteed.

New economic data released Friday has fueled the White House's fresh optimism, as the official U.S. jobless rate unexpectedly declined, with the official rate at 13.3% in May from 14.7% in April. Over the same period, the country also added more than 2.5 million jobs, the Labor Department said, shocking experts who had expected a worsening in the market as a result of the deadly coronavirus pandemic.

But economists contend the federal indicators mask a far grimmer reality at a time when millions of Americans still face the prospect of prolonged unemployment. For those who did maintain their old jobs, newly unfavorable conditions have left many workers trading one set of anxieties for another, now fearful for their financial and physical safety.

"People are coming back to work in jobs that are very different than they were three months ago," said Robert Scott, a senior economist at the left-leaning Economic Policy Institute. "They're very risky and there's a lot of uncertainty about what's to come. There's a rocky road ahead, and a lot of work on the economy left to be done."

While roughly 30 million Americans are receiving unemployment benefits, some are retaking their old jobs as their states start to reopen. Their return to the workplace coincides with improving employment figures in hard-hit sectors such as retail and hospitality, said Nick Bunker, the economic research director for the job-listing site Indeed, who described the numbers as a sign of a "partial bounce back." The data offers early, encouraging news, suggesting federal programs had helped in preventing even more widespread, lasting unemployment, experts said.

At the same time, though, Bunker said there was a higher-than-expected spike in part-time employment, one of

a few indicators that "suggests there has not been a full return to work" for some people. Indeed also found that the highest rate of job growth has occurred within the lowest-wage industries, including some food and beverage stores, raising questions about the extent to which some Americans may be falling behind financially.

Still, top Trump administration officials heartily celebrated Friday's jobs numbers. "Millions of Americans are still out of work, and the department remains focused on bringing Americans safely back to work and helping states deliver unemployment benefits to those who need them," Labor Secretary Eugene Scalia said in a statement Friday. "However, it appears the worst of the coronavirus' impact on the nation's job markets is behind us."

'It's not working for many'

For workers in some of those jobs, their headaches actually are just beginning.

When the weather turns warm, and the golfers hit the courses in Pennsylvania, Claudia Martin typically gets back to work at her local country club in the southwestern corner of the state. The 66-year-old Latrobe resident puts in roughly 30 hours a week each season, bartending and helping out with administrative office tasks, supplementing her monthly Social Security check.

But the coronavirus greatly threatened the club's operations, and Martin's hours have been halved since she returned to work just this week. "It's significantly less," she said of her resulting pay, threatening her ability to save for the offseason when the club is closed and she is out of work.

"The money I earned in tips, I would put away to help me get through the winter," Martin said, later adding: "The economy is working for some people. But it's not working for many lower-wage workers."

**The Honorable
Lourdes A. Leon Guerrero**
Governor

**The Honorable
Joshua F. Tenorio**
Lt. Governor

PUBLIC NOTICE

The Board of Directors of the A.B. Won Pat International Airport Authority, Guam (GIAA) will convene a Special Board meeting on Monday, June 15, 2020 at 4:00 p.m. in Terminal Conference Room No. 3 to discuss Approval of Award for Legal Services - RFP No. RFP-003-FY20. In light of COVID19 public health emergency, GIAA will adhere to social distancing orders. For those who wish to participate telephonically, please call 642-4717 or email arios@guamairport.net for further information. Parking is available in the Public Parking Lot.

For special accommodations or agenda items, please call the Board Office at 642-4717/18.

(This ad paid for by GIAA)

SENATOR THERESE M. TERLAJE
/ Mina'trentai Singlo na Liheslaturan Guåhan
35th Guam Legislature

**Committee on Health,
Tourism, Historic Preservation,
Land and Justice**

VIRTUAL PUBLIC HEARINGS • Monday, June 15, 2020 • Beginning at 9:00AM

~9:00 a.m. AGENDA~

- ❖ Informational Forum on the *Right to Self-Defense on Guam*
- ❖ Bill 67-35 (CDB) - Joe S. San Agustin - AN ACT TO AMEND §§ 7.111 AND 7.112 OF ARTICLE 6, AND § 7.86(b)(2)(A) OF ARTICLE 4, ALL OF CHAPTER 7, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO EXPANDING THE "CASTLE DOCTRINE" JUSTIFICATION FOR ACTS OF SELF DEFENSE AND ELIMINATING THE REQUIREMENT OF RETREATING BEFORE THE USE OF FORCE IN THE FACE OF IMMINENT DANGER.
- ❖ Bill No. 137-35 (CDB) - James C. Moylan - AN ACT TO AMEND ARTICLE 7 OF CHAPTER 80, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE HORMONE OR ANTI-ANDROGEN TREATMENT PROGRAM, ALSO KNOWN AS "CHEMICAL CASTRATION" FOR CONVICTED SEX OFFENDERS.

➤ If you would like to provide testimony during virtual hearings, and if you require special accommodations, please register with the Office of Senator Therese M. TerLaje via email at senatorterlaje@guam.com or 472-3586 no later than June 11, 2020. Further guidance to be provided.

➤ The hearing will broadcast on GFA Ch. 21, Docomo Channel 117/60.4 and streamed live at http://www.guamlegislature.com/live_feed.htm and on the Guam Legislatures YouTube Channel <https://www.youtube.com/channel/UCW6G3E1FeriK7HtSuf7Qyq>

This ad is paid for with government funds.

~2:00 p.m. AGENDA~

- ❖ Bill No. 277-35 (CDB) - Committee on Rules / By request of I Maga hāgan Guåhan, the Governor of Guam, in accordance with the Organic Act of Guam, AN ACT TO ADD A NEW ARTICLE 5 TO CHAPTER 4, TITLE 19 OF THE GUAM CODE ANNOTATED AND TO RECODIFY 18 GCA §90113 AS A NEW §4502 THEREOF, RELATIVE TO ESTABLISHING CRIMINAL LIABILITY FOR FAILURE OF A PARENT OR LEGAL GUARDIAN TO EXERCISE REASONABLE CARE, SUPERVISION, PROTECTION, AND CONTROL OVER THEIR MINOR CHILD WHEN SUCH ACT OR OMISSION PERMITS OR ENCOURAGES THE MINOR CHILD TO COMMIT A FELONY OR MISDEMEANOR CRIME.
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Senator Therese Terlaje <senatorterlajeguam@gmail.com>

SECOND NOTICE OF PUBLIC HEARINGS- MONDAY, JUNE 15, 2020 beginning at 9:00 a.m.

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Fri, Jun 12, 2020 at 8:02 AM

To: Speaker's Office <speaker@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatorcnelson@guamlegislature.org>, Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>, "Office of Senator Kelly Marsh (Taitano), PhD." <office.senatorkelly@guamlegislature.org>, Senator Regine Biscoe Lee <senatorbiscoelee@guamlegislature.org>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, Senator Therese Terlaje <senatorterlajeguam@gmail.com>, Senator Clynt Ridgell <sen.cridgell@teleguam.net>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, Senator Sabina Perez <office@senatorperez.org>, Senator Wil Castro <wilcastro671@gmail.com>, Senator Louise Borja Muna <senatorlouise@gmail.com>, Senator Telo Taitague <senatortelot@gmail.com>, Senator James Moylan <senatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>

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MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje, Chairperson
Committee on Health, Tourism, Historic Preservation, Land and Justice

Date: June 12, 2020

Subject: **NOTICE of Public Hearing** – Monday, June 15, 2020 beginning at 9:00 a.m.

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9:00 a.m.:

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We look forward to your participation. Due to Public Health Emergency restrictions, the hearing will be conducted virtually by remote broadcast only.

1. Written testimony may be submitted via email to senatorterlajeguam@gmail.com or via hand delivery or mail to the Office of Senator Therese M. Terlaje, Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910, up to ten (10) working days following the hearing.
2. Individuals who wish to provide live or pre-recorded oral/virtual testimony (maximum of 5 minutes) must register with the committee via email at senatorterlajeguam@gmail.com with their full name, contact number, and email address and must comply with legislative rules for this format. The deadline has been extended from June 11, 2020, to close of business today, Friday, June 12, 2020.
3. In compliance with the ADA, individuals requiring special accommodations or services should contact us at (671) 472-3586 or by email to senatorterlajeguam@gmail.com.

All testimony will be included in the Committee Reports for each agenda item and published on the [guamlegislature.org](http://www.guamlegislature.org) website. You can watch the hearing on *TV Channel 21GTA or Channel 117/60.4 Docomo*; or via http://www.guamlegislature.com/live_feed.htm. A recording of the hearing will be available on YouTube at [Guam Legislature Media](#) after the hearing.

Si Yu'os Ma'åse'!

--

Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

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 **Second Notice of Public Hearings_June 15, 2020_TMT.pdf**

440K



SENATOR THERESE M. TERLAJE

Committee on Health, Tourism, Historic Preservation, Land and Justice
I Mina' trentai Singko na Liheslaturan Guåhan
35th Guam Legislature

MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje, Chairperson
Committee on Health, Tourism, Historic Preservation, Land and Justice

Date: June 12, 2020

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Office Address: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Tel: (671) 472-3586 | Fax: (671) 969-3590 | Email: senatorterlajeguam@gmail.com | www.senatorterlaje.com

PERMITS OR ENCOURAGES THE MINOR CHILD TO COMMIT A FELONY OR MISDEMEANOR CRIME.

- **Bill No. 310-35 (COR)** – Telena C. Nelson - AN ACT TO ADD A NEW CHAPTER 93 TO TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO HOLDING PARENTS ACCOUNTABLE FOR THE HARMFUL ACTIONS OF THEIR CHILDREN SHALL BE CITED AS THE “PARENT ACCOUNTABILITY ACT OF 2020.”
- **Bill No. 275-35 (COR)** - Committee on Rules / By request of *I Maga'hågan Guåhan*, the Governor of Guam, in accordance with the Organic Act of Guam. AN ACT TO AMEND SUBSECTION (a) OF §80.70, CHAPTER 80, TITLE 9 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROHIBITING PAROLE FOR VIOLENT AND SEXUAL OFFENSES.
- **Bill No. 278-35 (COR)** - Committee on Rules / By request of *I Maga'hågan Guåhan*, the Governor of Guam, in accordance with the Organic Act of Guam. AN ACT TO AMEND SUBSECTION (b) OF §60.80, CHAPTER 60, TITLE 8 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROHIBITING PLEA DEALS WITHOUT REASONABLE PROOF OF VICTIM NOTIFICATION.

We look forward to your participation. Due to Public Health Emergency restrictions, the hearing will be conducted virtually by remote broadcast only.

1. Written testimony may be submitted via email to senatorterlajeguam@gmail.com or via hand delivery or mail to the Office of Senator Therese M. Terlaje, Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910 no later than 5pm on May 20.
2. Individuals who wish to provide live or pre-recorded oral/virtual testimony (maximum of 5 minutes) must register with the committee no later than 1pm on June 11, 2020, via email at senatorterlajeguam@gmail.com with their full name, contact number and email address and must comply with legislative rules for this format.
3. In compliance with the ADA, individuals requiring special accommodations or services should contact us at (671) 472-3586 or by email to senatorterlajeguam@gmail.com

All testimony will be included in the Committee Reports for each agenda item and published on the guamlegislature.org website. You can watch the hearing on *TV Channel 21GTA or Channel 117/60.4 Docomo*; or via http://www.guamlegislature.com/live_feed.htm . A recording of the hearing will be available on YouTube at [Guam Legislature Media](#) after the hearing.

Si Yu'os Ma'åse'!

Warrant issued for DOC contraband defendant

By Nick Delgado
nick@postguam.com

A man who was among the group charged in connection to a scheme to smuggle drugs and contraband into the Department of Corrections is wanted by a Superior Court of Guam Judge.

Ray Anthony Hocog, who is currently serving probation, was scheduled to appear via teleconference before Judge Anita Sukola on

Wednesday, but he was a no-show. The court discussed his latest probation violation, adding that he has twice failed to check in with the Adult Probation Services since March 11.

It was said in court that Hocog also failed a drug test in February. Sukola issued a \$5,000 bench warrant for Hocog's arrest.

Hocog pleaded guilty, last year, to criminal facilitation in connection to the prison contraband

investigation.

He was initially arrested on suspicion of conspiracy to promote major prison contraband after suspected crystal methamphetamine was found in the recreational yard of the Hagåtña Detention Facility in 2017.

► **HOCOG:** Ray Anthony Hocog talks with attorney Randy Cunliffe outside the courtroom of Superior Court of Guam Judge Vernon Perez on July 24, 2017.

Post file photo



Aircraft carrier sailors participate in COVID-19 study

By Nick Delgado
nick@postguam.com

Nearly 400 sailors from USS Theodore Roosevelt aircraft carrier, which recently left Guam, participated in a recent COVID-19 study conducted by the Centers for Disease Control and Prevention and the U.S. Navy's Bureau of Medicine.

The results show that about 60% of those sailors who were tested had "reactive antibodies" for the virus, and that "one-fifth of infected participants reported no symptoms." It was reportedly the first large-scale evaluation of a group of young people who have suffered a widespread infection from the virus.

The median age among the 382 who participated was 30 years, with 75.7% being male. At least two of them were hospitalized when they got the virus.

"The outbreak investigation included asking volunteers to complete a short survey and provide two specimens for laboratory testing (voluntary blood and nasal swab samples)," the Navy stated. "Antibody testing done on nearly 400 service members of the TR show nearly two-thirds (62%) were



USS THEODORE ROOSEVELT: Sailors assigned to the aircraft carrier USS Theodore Roosevelt depart the ship to move to off-ship berthing on April 10. Mass Communication Spc. 1st Class Chris Liaghat/U.S. Navy

infected with SARS-CoV-2 and that most were mildly ill. This is the first CDC published report on this specific demographic of young adults."

More than 1,000 sailors tested

positive for the virus after the ship docked in Apra Harbor. The carrier remained on Guam for two months before most of the crew was cleared and the ship returned to sea.

Learn more
Read the study at the Centers for Disease Control and Prevention website at https://www.cdc.gov/mmwr/volumes/69/wr/mm6923e4.htm?s_cid=mm6923e4_w.

"These results ... may contribute to a better understanding of COVID-19, not just in the U.S. military but also among other young adults and young Americans," said the study's author, Dan Payne, with the CDC.

A study of adolescents and young adults with mild COVID-19 illness in China found rapid propagation of chains of transmission by asymptomatic persons, the CDC's study states.

Symptoms more closely associated with the virus in this sample include a loss of taste or smell, muscle pain, fever and chills.

The study was also able to show the effectiveness of social distancing practices aboard the ship.

Navy Surgeon General Rear Adm. Bruce Gillingham said the results would be used to better refine the Navy's procedures to handle the virus within the service.

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SENATOR THERESA M. TERLAE
Mina Terlatai Singko na Liheslaturan Guahan
35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

VIRTUAL PUBLIC HEARINGS • Monday, June 15, 2020 • Beginning at 9:00AM

~9:00 a.m. AGENDA~

- Informational Forum on the Right to Self-Defense on Guam
- Bill 47-35 (COR) - Joe S. San Agustin - AN ACT TO AMEND §§ 7.111 AND 7.112 OF ARTICLE 5, AND § 7.84(b)(2)(A) OF ARTICLE 4, ALL OF CHAPTER 7, TITLE 9, GUAM CODE ANNOTATED; RELATIVE TO EXPANDING THE "CASTLE DOCTRINE" JUSTIFICATION FOR ACTS OF SELF DEFENSE AND ELIMINATING THE REQUIREMENT OF RETREATING BEFORE THE USE OF FORCE IN THE FACE OF IMMINENT DANGER.
- Bill No. 137-35 (COR) - James C. Moylan - AN ACT TO AMEND ARTICLE 7 OF CHAPTER 80, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE HORMONE OR ANTI-ANDROGEN TREATMENT PROGRAM, ALSO KNOWN AS "CHEMICAL CASTRATION" FOR CONVICTED SEX OFFENDERS.

~2:00 p.m. AGENDA~

- Bill No. 277-35 (COR) - Committee on Rules / By request of I Maga hagan Guahan, the Governor of Guam, in accordance with the Organic Act of Guam, AN ACT TO ADD A NEW ARTICLE 5 TO CHAPTER 4, TITLE 19 OF THE GUAM CODE ANNOTATED AND TO RECODIFY 18 GCA §90113 AS A NEW §4502 THEREOF, RELATIVE TO ESTABLISHING CRIMINAL LIABILITY FOR FAILURE OF A PARENT OR LEGAL GUARDIAN TO EXERCISE REASONABLE CARE, SUPERVISION, PROTECTION, AND CONTROL OVER THEIR MINOR CHILD WHEN SUCH ACT OR OMISSION PERMITS OR ENCOURAGES THE MINOR CHILD TO COMMIT A FELONY OR MISDEMEANOR CRIME.
- Bill No. 310-35 (COR) - Telana C. Nelson - AN ACT TO ADD A NEW CHAPTER 93 TO TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO HOLDING PARENTS ACCOUNTABLE FOR THE HARMFUL ACTIONS OF THEIR CHILDREN SHALL BE CITED AS THE "PARENT ACCOUNTABILITY ACT OF 2020."
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If you would like to provide testimony during virtual hearings, and if you require special accommodations, please register with the Office of Senator Theresa M. Terlajie via email at senatorterlajie@guam.gov or 472-3586 no later than June 11, 2020. Further guidance to be provided.

The hearing will broadcast on GTA Ch. 21, Docomo Channel 117/60.4 and streamed live at http://www.guamlegislature.com/live_feed.htm and on the Guam Legislatures YouTube Channel <https://www.youtube.com/channel/UCWGC3ELFerik7HtSu70tvg>

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SENATOR THERESE M. TERLAJE

Committee on Health, Tourism, Historic Preservation, Land and Justice
I Mina' trentai Singko na Libeslaturan Guåhan
35th Guam Legislature

VIRTUAL PUBLIC HEARING AGENDA

Monday, June 15, 2020 beginning at 9:00 a.m.
via Zoom Conference Platform

9:00 a.m.: (Participants must log in to hearing link at 8:30 a.m.)

- Informational Forum on the *Right to Self-Defense on Guam*.
- **Bill 47-35 (COR)**- Joe S. San Agustin- AN ACT TO AMEND §§ 7.111 AND 7.112 OF ARTICLE 5; AND § 7.86(b)(2)(A) OF ARTICLE 4, ALL OF CHAPTER 7, TITLE 9, GUAM CODE ANNOTATED; RELATIVE TO EXPANDING THE “CASTLE DOCTRINE” JUSTIFICATION FOR ACTS OF SELF DEFENSE AND ELIMINATING THE REQUIREMENT OF RETREATING BEFORE THE USE OF FORCE IN THE FACE OF IMMINENT DANGER.
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2:00 p.m.: (Participants must log in to hearing link at 1:30 p.m.)

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ANNOTATED, RELATIVE TO PROHIBITING PAROLE FOR VIOLENT AND SEXUAL OFFENSES.

- **Bill No. 278-35 (COR)** - Committee on Rules / By request of *I Maga'hågan Guåhan*, the Governor of Guam, in accordance with the Organic Act of Guam. AN ACT TO AMEND SUBSECTION (b) OF §60.80, CHAPTER 60, TITLE 8 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROHIBITING PLEA DEALS WITHOUT REASONABLE PROOF OF VICTIM NOTIFICATION.

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Si Yu'os Ma'åse'!



**I Mina'trentai Singko na Liheslaturan Guåhan
Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

Date: **Monday, June 15, 2020**

Time: **9:00 a.m.**

Virtual Informational Forum on the Right to Self-Defense on Guam.

	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	Chief Deputy Attorney General Shannon Taitano, Office of the Attorney General of Guam							
2	John P. Morrison, Deputy Director- Public Defender Service Corporation				x	x		
3	Assistant AG Sean Brown, Office of the Attorney General				X	x		
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Hon. Leevin Taitano Camacho
Attorney General of Guam

June 30, 2020

The Honorable Therese M. Terlaje
Chairperson, Committee on Justice
I Mina'trentai Singko Na Liheslaturan Guåhan
173 Aspinall Ave.
Ada Plaza Center, Suite 207
Hagåtña, GU 96910

Re: June 15, 2020 Presentation on Guam's Self-defense Law

Håfa Adai Senator Terlaje:

Thank you for the opportunity to present during your Committee on Justice's Informational Briefing on the right to self-defense. Please see attached for Assistant Attorney General Sean Brown's statement as presented to the Committee on June 15.

Sinsramente,

A handwritten signature in blue ink, appearing to read "S. Mendiola".

Stephanie E. Mendiola
General Counsel/Deputy Attorney General
Division of General Counsel



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Hon. Leevin Taitano Camacho
Attorney General of Guam

Presentation on Guam's Self-Defense Law to the Committee on Justice

Statement of Assistant Attorney General Sean Brown

June 30, 2020

Self-defense comes up in two phases: (1) the charging phase and (2) the trial phase. At the charging phase, when a prosecutor thinks about charging a suspect with a criminal case, we first determine if that person has any defenses available to him before we charge the case. Self-defense commonly comes up in cases involving homicide, aggravated assault, misdemeanor assault, and family violence. In almost every single homicide case that has been charged, self-defense is at least somewhat an issue. Before charging a case, we look at the case and make our own determination if we believe that self-defense was engaged. Did the person who committed the crime have to protect themselves?

At the trial phase, either the defendant or its counsel will ask the court for a self-defense jury instruction for the jury to consider. If the court allows it, it becomes quite burdensome for the People because it adds an additional element to the charges for the People to provide beyond a reasonable doubt to the jury that not just that crime occurred, but also that the Defendant was not acting in self-defense. The standard on Guam for whether the jury considers self-defense is in *People v. Root*, 2005 Guam 16. If there is any evidence at all of self-defense, then the Defendant is entitled to the instruction and the burden shifts to the People to disprove self-defense.

Whenever a law is being updated, added, or changed, the People have to be careful because it could become confusing to a jury. It could be misused by a defendant at trial. That is most concerning if self-defense is being pursued but may not be legitimate.

There are two types of self-defense: (1) deadly force and (2) protective force. Deadly force is essentially any force used to protect oneself if that force can cause death or serious bodily injuries. For example, a gun, knife, bat, and maybe a motor vehicle can be used in deadly force self-defense. However, knives, bats, and motor

vehicles have common everyday use. A firearm is usually reserved for just one thing and that is to potentially kill someone.

There are three limitations to deadly force: (1) It must be in response to someone who might be experiencing death, serious bodily injury, kidnapping, or CSC. The initial harm, danger, or threat has to be quite serious before someone can engage with deadly force self-defense. For example, I am at the K-Mart parking lot and I get into a fender bender with somebody else. It's my fault and I apologize to the other driver. However, the other driver is very upset, gets out of their vehicle, starts yelling at me, and then reaches in their vehicle for a tire iron. They start approaching me, threatening to kill me, raises their tire iron above their head, and comes up real close to me. I can then use deadly force with a knife or firearm to defend myself because I could experience death or serious bodily injury if I don't protect myself.

There are two other limitations for deadly force. (2) Someone cannot have provoked the need first for deadly force. For example, if someone starts a fight or becomes violent, then another person reacts, then that person re-reacts with deadly force, they cannot claim self-defense because they provoked the need for it. They are the initial aggressor. (3) If someone who is experiencing a threat can easily retreat, flee, or walk away, the person should retreat and is not allowed to engage in deadly self-defense. Under 9 GCA 7.86(b)(2)(a), this duty to retreat does not apply if the person is in their dwelling, vehicle, or place of work.

Protective Force is any force that doesn't reach the level that deadly force does. This is where someone cannot die. There cannot be any serious bodily injury. For example, a push, shove, or punch can be used as protective force. In an example scenario, I'm in the K-Mart parking lot, got into a fender bender, and the other driver is irate. He has no weapons, but walks up to me and shoves me. He causes me pain to my chest and keeps shoving me. I am only allowed to use protective force because my life is not being threatened. I can only respond with protective force like my hands. With protective force, there is no duty to retreat or flee.

Both deadly force and protective force self-defense have an immediacy requirement. One cannot respond with any self-defense if there is no immediate threat. For example, if a person is 30-40 feet across the street, yelling obscenities, and threatening me, I cannot use any form of self-defense because that person is not an immediate threat. It is a future threat at best. I can still walk away or stand my ground. However, if that person starts advancing, it might change the situation, but without immediate threat, no self-defense can be used.

- *End*

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June 19, 2020

Chairperson Senator Therese M. Terlaje
Committee on Health, Tourism, Historic Preservation, Land and Justice
I Mina'trentai Singko Lehislaturan Guahan
Hagåtña, GU 96910

Re: Informational Forum on Right to Self-Defense on Guam

Dear Chairperson Senator Therese M. Terlaje and committee members:

It was my pleasure to offer testimony before your committee on June 15, 2020. You will see from the analysis below that the right to self-defense on Guam is detailed and anticipates application in a variety of situations. While that is true, it is also true that self-defense is a common-sense doctrine and is as old as the law itself. In some cases, it may be perfectly obvious to the police and all concerned that the use of self-defense was justified. In others, where the evidence is less clear, a jury may make the determination based on a number of factors and community standards. In cases where the circumstances require a jury to consider the case, they will always be asked to determine if the conduct was reasonable.

Please accept the following as a general overview of the right to self-defense on Guam and how it is commonly applied.

Defense of Justification

One is justified in using a reasonable amount of force against his adversary when he reasonably believes that he is in immediate danger of unlawful bodily harm from his adversary and that the use of such force is necessary to avoid this danger.¹

The justifiable use of deadly force—defined as force which a person uses with the intent of causing, or which he knows to create a substantial risk of causing death or serious bodily

¹ 9 Guam Code Ann. § 7.84. “The use of force upon or toward another person is justifiable when the defendant believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.”

injury²—has three limitations. Lethal force is not justifiable unless the defendant believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or rape or sodomy compelled by force or threat;³ nor is it justified if the defendant is the initial aggressor of a lethal conflict,⁴ or if the defendant knows he can avoid the necessity of using such force with complete safety by retreating.⁵

The defense has three elements: (1) the demand that the defendant's perception be reasonable, (2) the requirement that the threatened attack be imminent, and (3) the prohibition against using more force than reasonably appears necessary to repel the attack.

The prevailing self-defense rule does not limit its application to "reasonable" belief but only to an honest or actual belief that the situation involved threat of harm of sufficient magnitude and immediacy to justify defensive force used. It is to be expected that the jury will use the reasonableness of the belief as a factor in determining its actuality.

The law limits self-defense to situations where the force is immediately necessary for self-protection, eliminating the common claim of self-defense alleging justification because of reputation alone. The actor must believe that his defensive action is immediately necessary and the unlawful force against which he defends must be force that he apprehends will be used on the present occasion, but he need not apprehend that it will be used immediately. Simply put, the danger must be present at the time that force is used.

The requirement of proportionality relates to the amount of defensive force used, and prohibits the use of excessive force. Specifically, an actor cannot use deadly force to repel a nondeadly attack. There are two elements of the defense in this context. First, the defendant must have reasonably perceived that the imminent attack created a threat to his life or of serious injury. Second, the defendant must have reasonably perceived nondeadly force as inadequate to prevent this danger.

Take for example a scenario wherein a woman named X, arm uplifted with a knife in her hand, comes at a man named Y. X screams, "I'm gonna get you!" Y responds by pulling out a gun and shooting X dead on the spot. At Y's trial for homicide for killing X, Y testifies that he thought X was going to kill him and that he had to shoot X in order to stop her.

² 9 Guam Code Ann. § 7.76. (Intentionally firing a firearm in the direction of another person or at a moving vehicle constitutes deadly force. A threat to cause death or serious bodily injury does not constitute deadly force, so long as the defendant's intent is limited to creating an apprehension that he will use deadly force if necessary.)

³ 9 Guam Code Ann. § 7.86(b). "The use of deadly force is not justifiable unless the defendant believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or rape or sodomy compelled by force or threat."

⁴ 9 Guam Code Ann. § 7.86(b)(1). "The use of deadly force is not justifiable if the defendant, with the purpose of causing death or serious bodily harm, is the initial aggressor[.]" (In a scenario wherein an actor unlawfully starts a nonlethal conflict with another, said actor does not lose his privilege of self-defense if the other person escalates it into a lethal assault.)

⁵ 9 Guam Code Ann. § 7.86(b)(2). "The use of deadly force is not justifiable [] if the defendant knows he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to which a person is asserting a right or by complying with a demand that he abstains from any action which he has no duty to take."

Y would be able to assert a valid self-defense claim because of the imminence of the attack, the necessity of using deadly force in the face of an attack that threatened death or serious bodily harm, the reasonableness of his belief with respect to the imminence of the attack and amount of force necessary to repel the attack. Additionally, Y could maintain the defense if he shows that he could not have prevented the necessity of using such force with complete safety by retreating.

Let's say X had been unarmed and merely shouted, "I'm gonna get my cousins and we'll beat you up!" The threat of bodily harm or death was not immediate, but Y is still entitled to present his defense of self-defense because the jury could find that X believed his defensive action was immediately necessary to disable Y to prevent an attack by overwhelming numbers—so long as Y apprehended the attack on the present occasion.

Now consider a different scenario: Y approaches X and glares at her. X pulls out a gun and shoots Y dead on the spot. X is charged with homicide. At her trial, X asserts self-defense and testifies that even though she did not know Y and had never seen Y before, X could tell from the way that Y looked at her that Y was going to either rape or kill her.

Although a judge must allow the self-defense issue to go to the jury under *People v. Gargarita*,⁶ the jury would be instructed on both objective (reasonable grounds for belief) and subjective (actual belief) elements of reasonableness for self-defense. The jury could reject X's claim of self-defense on either or both grounds.

Although some states permit an imperfect claim of self-defense in a scenario where the defendant was unreasonably mistaken about the belief that he was justified in using force and force of the magnitude used (deadly force), the practice is not codified in Guam. It would be much more likely, in my experience, that the imperfect self-defense claim would be used by the defense in an attempt to negotiate the case favorably. This would cover situations where the defendant was legitimately frightened to death and felt justified in using force but the fear was objectively unreasonable. Where imperfect self-defense is recognized, the result is mitigation of the offense from murder to manslaughter, not an acquittal.

Necessity and Duty to Retreat

The underlying rationale of self-defense is necessity.⁷ Therefore a duty to retreat is a logical derivative of the requirement of showing necessity. The actor who knows he can retreat with safety also knows that the necessity can be avoided in that way.⁸

⁶ 2015 Guam 28 (reversing manslaughter conviction because jury instructions did not state that self-defense was a justification defense or that the jury was obligated to acquit defendant if the prosecution failed to meet its burden on the self-defense issue), see also *People v. Root*, 2005 Guam 16.

⁷ See 9 Guam Code Ann. § 7.80. "A person is justified in conduct which would otherwise constitute an offense when such conduct is immediately necessary to avoid an imminent public disaster or serious bodily injury to a person or serious damage to property which is about to occur through no fault of the defendant, and that harm which might reasonably be expected to result from such conduct is less than the harm which the defendant seeks to prevent."

⁸ Model Penal Code § 3.04(2)(b)(ii), comment 4(c) (1985).

Currently, Guam law follows the Model Penal Code that had adopted the common law rule requiring retreat when the actor uses deadly force.⁹ The failure to retreat is a circumstance to be considered with all the others in order to determine whether the defendant went farther than he was justified in doing, not a categorical proof of guilt.¹⁰ The retreat rule does not apply when the defensive force used does not rise to a lethal level capable creating a substantial risk of causing death or serious bodily injury.

The retreat rule is only applicable if (1) it would not imperil the would-be defender, (2) if there is a place of complete safety available to the non-aggressor and (3) if the person under siege is aware that the place of safety exists.¹¹ One threatened by an aggressor armed with a gun will rarely be able to get to a place of safety or be aware of it because of the exciting effect of the threat.

Modeled after Florida legislation and enacted in 2014,¹² Guam's Castle Doctrine Act created an exception to the retreat requirement and allows a person in his home, place of work, or vehicle, to use defensive force, including deadly force, to defend himself or another.¹³ Guam law creates a presumption that a homeowner has a reasonable fear of imminent peril or death whenever another person is in the process of unlawfully and forcefully entering, or had unlawfully or forcefully entered, a business, residence or occupied vehicle.¹⁴ Under this law, the homeowner does not need to prove that the intruder presented the threat of death or serious bodily injury.

There are three exceptions to the application of this presumption. First, the presumption does not apply if the person against whom the defensive force is used has the right to be in or is a lawful resident of the business, residence, or vehicle.¹⁵ Second, the presumption does not apply if the person who uses defensive force is engaged in a criminal activity or is using the business,

⁹ See Model Penal Code § 3.04(2)(b)(ii) (1985).

¹⁰ Model Penal Code § 3.04(2)(b)(ii), comment 4(c) (1985) (citing *Brown v. United States*, 256 U.S. 335, 343 (1921)).

¹¹ Joshua Dressler, *Understanding Criminal Law* § 18.03[C][1], p. 204 (2d ed. 1995).

¹² Public Law 32-111 (Feb. 10, 2014), an act to add new §§ 37.70, 37.71, 37.72, and 37.73 to Chapter 37 and to amend § 7.86(b)(2)(A) of Chapter 7 of Title 9, Guam Code Annotated, relative to granting immunity from criminal prosecution or civil action to a person who uses force intended or likely to cause death or serious bodily injury to someone who unlawfully or forcibly enters a residence, vehicle or business; to be known as the "Castle Doctrine Act".

¹³ 9 Guam Code Ann. § 7.86(b)(2)(A). "[T]he defendant is not obliged to retreat from his dwelling, place of work or vehicle, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the defendant knows it to be[.]"

¹⁴ 9 Guam Code Ann. § 7.112(a). "A person is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily injury to another if: (1) the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully or forcefully entered, a business, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the business, residence, or occupied vehicle; and (2) the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred."

¹⁵ 9 Guam Code Ann. § 7.112(b)(1). "The presumption set forth in Subsection (a) does not apply if [] the person against whom the defensive force is used has the right to be in or is a lawful resident of the business, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person[.]"

residence, or occupied vehicle to further a criminal activity.¹⁶ Third, the presumption does not apply if the person against whom defensive force is used is a uniformed law enforcement officer who is acting in the performance of his or her official duties, and the officer identified himself or herself in accordance with applicable law, or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.¹⁷

The Act also creates a rebuttable presumption that a person who unlawfully and by force enters or attempts to enter a person's business, residence, or occupied vehicle is acting with the intent to commit an unlawful act involving force or violence.¹⁸

Finally the Act provides immunity from criminal prosecution and civil action and authorizes law enforcement agencies to investigate the use of deadly force while prohibiting the agencies from arresting a person in these circumstances unless the agency determines that there is probable cause that the force the person used was unlawful.¹⁹

I hope this analysis has been helpful in evaluating self-defense law on Guam.

Sincerely,



John Patrick Morrison
Deputy Director

¹⁶ 9 Guam Code Ann. § 7.112(b)(2).

¹⁷ 9 Guam Code Ann. § 7.112(b)(3).

¹⁸ 9 Guam Code Ann. § 7.112(c).

¹⁹ 9 Guam Code Ann. § 7.113.

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voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the criminal or otherwise unlawful conduct contemplated by the conspiracy, as the case may be.

(d) A renunciation is not “voluntary and complete” within the meaning of this Section if it is motivated in whole or in part by:

(1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime; or

(2) a decision to postpone the criminal conduct until another time or to substitute another victim or another but similar objective.

SOURCE: M.P.C. §§ 5.01(4), 5.02(3), 5.03(6); Cal. § 802 (T.D.2, 1968); Cal. § 570 (1971); *Mass. ch. 263, § 49(b); N.J. §§ 2C:5-1(c), 2C:5-2(e).

CROSS-REFERENCES: §§ 13.10, 4.65, 13.20 and 13.30, all of this Title.

COMMENT: § 7.73 is a new section which substantially narrows the defense of “renunciation” as allowed by case law. The situations in which it is allowed and disallowed are clearly stated within the law. The defense is unavailable to a person who is charged as a principal with a completed crime. It is available only in cases of attempt, criminal facilitation or conspiracy. Further, in all cases the defendant must have taken some affirmative steps to see that the crime is not carried through.

ARTICLE 4
JUSTIFICATION

- § 7.76. Deadly Force Defined.
- § 7.78. Justification a Defense; Civil Remedies Not Impaired by Article.
- § 7.80. Necessity Defined and Allowed.
- § 7.82. Execution of Public Duty Defined and Allowed.
- § 7.84. Self-Defense Defined and Allowed.
- § 7.86. Self-Defense Limited.
- § 7.88. Force in Defense of Third Persons: Defined and Allowed.
- § 7.90. Force in Defense of Property: Defined and Allowed.
- § 7.92. Use of Force in Law Enforcement.

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- § 7.94. Use of Force by Person Having Special Care, Duty or Responsibility for Another.
- § 7.96. When Force Allowed by §§ 7.94 and 7.96 is Unavailable.
- § 7.98. Justification in Seizure of Property.

COMMENT: Article 4 could be treated as a part of Article 3, Defenses. However, it is desirable to provide a separate article and separate consideration for the defense of justification. It should be noted that throughout this Article, the law looks not to the offense with which the defendant has been charged, but to the conduct which he seeks to justify. Moreover, the law carefully establishes its standard both as to the right to use force and as to the amount of force which may be used. This Article supersedes the very limited provisions of former §§ 196 through 199, Guam Penal Code, which provided a defense of justification for homicide.

§ 7.76. Deadly Force Defined.

Deadly force means force which a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Intentionally firing a firearm in the direction of another person or at a moving vehicle constitutes deadly force. A threat to cause death or serious bodily injury does not constitute deadly force, so long as the defendant's intent is limited to creating an apprehension that he will use deadly force if necessary.

SOURCE: M.P.C. § 3.11(2); Cal. § 600 (1971); *Mass. ch. 263, § 32(c)(2); N.J. § 2C:3-11(b).

§ 7.78. Justification a Defense; Civil Remedies Not Impaired by Article.

(a) In a prosecution for an offense, justification as defined in this Article is a defense.

(b) The fact that conduct is justifiable under this Article does not abolish or impair any remedy for such conduct which is available in any civil action.

SOURCE: *M.P.C. § 3.01; Cal. § 605 (1971); Mass. ch. 263, § 32(a); N.J. § 2C:3-1.

CROSS-REFERENCES: § 7.55(c); § 85.22, Code of Criminal Procedure.

COMMENT: Subsection (a) of § 7.78 makes clear that justification is a defense, but not an "affirmative defense" and when raised as a defense and

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at trial the prosecution has the burden of disproving beyond a reasonable doubt.

Justification is not, as stated, an “affirmative defense” as provided in 8 GCA (Criminal Procedure) § 85.22. This is consistent with all of the sources above. The M.P.C. and N.J. referred to it as an “affirmative defense;” however, the term is used differently there than here. All four sources place the burden on the prosecution to disprove the defense.

Subsection (b) merely states that this Code, by creating certain justifications, does not affect or attempt to affect the civil liability of the actor. However, it is quite possible that the justifications described here are also justifications against civil liability.

§ 7.80. Necessity Defined and Allowed.

A person is justified in conduct which would otherwise constitute an offense when such conduct is immediately necessary to avoid an imminent public disaster or serious bodily injury to a person or serious damage to property which is about to occur though no fault of the defendant, and that harm which might reasonably be expected to result from such conduct is less than the harm which the defendant seeks to prevent.

SOURCE: M.P.C. § 2.02; *Cal. § 610(b) (1971); Mass. ch. 263, § 40; N.J. § 32-2.

COMMENT: Section 7.80 is new, but codified a principle which has been applied by prosecutors in the past. This Section will justify, for example, breaking into a house in order to make a telephone call essential to saving a person’s life or destroying one person’s property in order to prevent a fire from spreading into a densely populated community. This Section supplements any defense which might be otherwise available under this Article.

§ 7.82. Execution of Public Duty Defined and Allowed.

(a) Except as otherwise provided in Subsection (b), conduct is justifiable when it is required or authorized by:

- (1) the law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his duties;
- (2) the law governing the execution of legal process;
- (3) the judgment or order of a competent court;
- (4) the law governing the armed services or the lawful conduct of war; or

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(5) any other provision of law imposing a public duty.

(b) The other sections of this Article apply to:

(1) the use of force upon or toward the person of another for any of the purposes dealt with in such sections; and

(2) the use of deadly force for any purpose, unless the use of such force is otherwise expressly authorized by law or occurs in the lawful conduct of ward.

(c) The justification afforded by Subsection (a) applies:

(1) when the defendant believes his conduct to be required or authorized by the judgment or direction of a competent court or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and

(2) when the defendant believes his conduct to be required or authorized to assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority.

SOURCE: See G.P.C. Sec. 196(1),(2); *M.P.C. Sec. 3.03; Cal. § 610(a) (1971); Mass. ch. 263, § 4.39; N.J. 2C:3-3.

COMMENT: This Section provides a comprehensive statement of the relationship between justification under the criminal law and the law relating to public duties and functions. This Section is substantively the same as Model Penal Code § 3.03.

Subsection (b) places restriction upon the application of this Section and directs the circumstances in which other Sections of this article are to be applied.

Subsection (c) extends the justification afforded by Subsection to cases where the defendant acts in belief that his conduct is required by a judgment or in the lawful execution of legal process or to assist a public officer in the performance of his duties.

§ 7.84. Self-Defense Defined and Allowed.

Except as otherwise provided by §§ 7.86 and 7.96, the use of force upon or toward another person is justifiable when the defendant believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

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SOURCE: G.P.C. § 197(1),(3); *M.P.C. § 3.04(1); Cal. § 630 (1971); Mass. ch. 263, § 35(a); N.J. § 2C:3-4(a).

CROSS-REFERENCES: § 7.84 and 7.86 of this Code; See Comment after § 7.86.

COMMENT: This Section is the general Section relative to the justification commonly known as “self-defense”. The main difference between the treatment of “self-defense in this Section and as it has been treated in the case law of Guam is that this Section limits self-defense to situations where the force is immediately necessary for self protection against unlawful force “on the present occasion.” Thus, the common claim of self-defense now used by defendants alleging that they were justified because the victim “was known to” carry fire arms in the past is clearly no longer a defense under this Section. The danger must be present at the time the force is used and reputation alone will not serve as a justification. This should severely limit the use of this defense in comparison with practice.

§ 7.86. Self-Defense Limited.

(a) The use of force is not justifiable under § 7.84;

(1) To resist an arrest which the defendant knows is being made by a peace officer in the performance of his duties, although the arrest is unlawful; or

(2) to resist force used by the occupier or possessor of property or by another person on his behalf, where the defendant knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if;

(A) the defendant is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest;

(B) the defendant has been unlawfully dispossessed of the property and is making a re-entry or recaption justified by § 7.90, or

(C) the defendant believes that such force is necessary to protect himself against death or serious bodily harm.

(b) The use of deadly force is not justifiable under § 7.84 unless the defendant believes that such force is necessary to protect

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himself against death, serious bodily harm, kidnapping or rape or sodomy compelled by force or threat; nor is it justifiable if;

(1) the defendant, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or

(2) the defendant knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstains from any action which he has no duty to take, except that:

(A) the defendant is *not* obliged to retreat from his dwelling, place of work or vehicle, *unless* he was the initial aggressor or is assailed in his place of work by another person whose place of work the defendant knows it to be; and

(B) a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

(c) Except as otherwise required by Subsections (a) and (b), a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.

SOURCE: G.P.C. § 197(3); *M.P.C. § 3.04(2); Cal. § 635 (1971); Mass. ch. 263 § 35(b), 39; N.J. § 2C:3-4(b). Subsection (b)(2)(A) amended by P.L. 32-111:2 (Feb. 10, 2014).

CROSS-REFERENCES: § 7.84 of this Code.

COMMENT: This Section and § 7.84 provide the basic rule for self-defense as a justification. Section 7.84 states the general rule but does not limit its application to “reasonable” belief but only to an honest or actual

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belief. It is to be expected that the jury will, however, use the reasonableness of the belief as a factor in determining its actuality. Moreover, § 7.96 provides that a justification defense is not available in a prosecution for which either recklessness or negligence is a sufficient probability (e.g., manslaughter), if the defendant was reckless or negligent in forming his belief.

Section 7.86 provides a limitation, and exceptions to this limitations, upon the justifiability of the use of force. These are all clearly set out within the Section. Probably the greatest departure from prior law exists in § 7.86(a) (1) in that use of force is not justifiable to resist an illegal arrest when the defendant knows that the arresting person is a peace officer acting in the performance of his duties. This limitation will limit certain justifications now presented fairly regularly to the courts of Guam.

§ 7.88. Force in Defense of Third Persons: Defined and Allowed.

(a) Except as otherwise provided by this Section and § 7.96, the use of force upon or toward the person of another is justifiable to protect a third person when:

(1) the defendant would be justified under § 7.84 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect;

(2) under the circumstances as the defendant believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(3) the defendant believes that his intervention is necessary for the protection of such other person.

(b) Notwithstanding Subsection (a):

(1) when the defendant would be obliged under Paragraph (2) of Subsection (b) of § 7.86 to retreat or take other action, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person;

(2) when the person whom the defendant seeks to protect would be obliged under Paragraph (2) of Subsection (b) of § 7.86 to retreat or take similar action if he knew that he could obtain complete safety by so doing, the defendant is obliged to try to cause him to do so before using force in his protection if

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the defendant knows that he can obtain complete safety in that way; and

(3) neither the defendant nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in his own.

SOURCE: G.P.C. § 197(1), (3); M.P.C. § 3.05; Cal. § 630, 635 (1971); Mass. ch. 263, § 36, 39; N.J. § 2C:3-5.

CROSS-REFERENCES: §§ 7.86 and 7.96 of this Code.

COMMENT: Section 7.88 continues and expands upon the defense of the use of force to protect a third person as found in present law. This defense is expanded in that the person using force is not limited to any relationship, stated in law, with a person he is protecting. Moreover, the Section permits intervention under the facts as the defendant believes them to be, subject to §§ 7.96 and 7.84 of this Code. It might bear emphasis, that the intervenor might well be protected even though the person on whose behalf he acts could not, in fact, use self-defense.

Nevertheless, this Section limits the right of self-defense, as popularly practiced on Guam, in that a person assisting another in, say, a fight outside a bar, must urge his friend to retreat if retreat is possible before he can claim the right to self-defense. He cannot simply barge in and start fighting without more.

§ 7.90. Force in Defense of Property: Defined and Allowed.

(a) Except as otherwise provided by this Section and § 7.96, the use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary:

(1) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property, provided that such land or movable property is, or is believed by the defendant to be, in his possession or in the possession of another person for whose protection he acts; or

(2) to effect an entry or re-entry upon land or to retake tangible movable property, provided that the defendant believes that he or the person by whose authority he acts is entitled to possession, and the force is used immediately or on fresh pursuit after such dispossession.

(b) For the purposes of Subsection (a):

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(1) person who has parted with the custody of property to another who refuses to restore it to him is no longer in possession, unless the property is movable and was and still is located on land in his possession;

(2) a person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim of right.

(c) The use of force is justifiable under this Section only if the defendant first request the person against whom such force is used to desist from his interference with the property, unless the defendant believes that:

(1) such request would be useless;

(2) it would be dangerous to himself or another person to make the requests; or

(3) substantial harm will be done to the physical condition of the property which is sought to be protected before the requests can effectively be made.

(d) The use of force to prevent or terminate a trespass is not justifiable under this Section if the defendant knows that the exclusion of the trespasser will expose the trespasser to substantial danger of serious bodily harm.

(e) The use of force to prevent an entry or re-entry upon land or the recaption of movable property is not justifiable under this Section, although the defendant believes that such re-entry or recaption is unlawful, if:

(1) the re-entry or recaption is made by or on behalf of a person who was actually dispossessed of the property; and

(2) it is otherwise justifiable under Paragraph (2) of Subsection (a).

(f) The use of deadly force is not justifiable under this Section unless the defendant believes that:

(1) the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or

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(2) the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:

(A) has employed or threatened deadly force against or in the presence in the defendant; or

(B) the use of force other than deadly force to prevent the commission or the consummation of the crime would expose the defendant or another in his presence to substantial danger of serious bodily harm.

SOURCE: G.P.C. § 197(2); M.P.C. § 3.08(1) -- (3); Cal. § 640(1971); Mass. ch. 263, § 37 & 39; N.J. § 2-C:3-6.

CROSS-REFERENCES: § 7.98; Distinguish; § 7.96 of this Code.

COMMENT: This Section justifies, under certain limited circumstances, the use of force against persons in order to protect or repossess one's property. This is in contrast with § 7.98 which allows the use of force against property. The defense and its limitations are clearly set forth within this statute.

§ 7.92. Use of Force in Law Enforcement.

(a) Except as otherwise provided by this Section and § 7.96, the use of force upon or toward the person of another is justifiable when the defendant is making or assisting in making an arrest and the defendant believes that such force is immediately necessary to effect a lawful arrest.

(b) The use of force is not justifiable under this Section unless:

(1) the defendant makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(2) when the arrest is made under a warrant, the warrant is valid or believed by the defendant to be valid.

(c) The use of deadly force is not justifiable under this Section unless:

(1) the arrest is for a felony;

(2) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer;

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(3) the defendant believes that the force employed creates no substantial risk of injury to innocent persons; and

(4) the defendant believes that:

(A) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(B) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of person charged with or convicted of a crime.

(e) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful.

(f) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that (1) he believes that the arrest is lawful (2) the arrest would be lawful if the facts were as he believes them to be.

(g) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

(1) any limitations imposed by the other provision of this Article on the justifiable use of force in self-protection, for the

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protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(2) the use of deadly force is not in any event justifiable under this Subsection unless:

(A) the defendant believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

(B) the defendant believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.

SOURCE: G.P.C. § 196, 197; *M.P.C. § 3.07; Cal. § 640-655 (1971); Mass. ch. 263, § 34, 39; N.J. § 2C:3-7.

CROSS-REFERENCES: § 7.96, § 7.86 (b) (2) (c) of this Code.

COMMENT: A fairly complex set of rules is provided for justification as the defense in several areas related to law enforcement. This Section is based on Model Penal Code § 3.07. Subsections [a] through [c] and [d] and [f] deal with arrest and authorize the use of such force is believed to be immediately necessary to make a lawful arrest. This provisions apply to police officers and private citizens alike; however, the latter's privileges are much more limited, particularly as to the right to use deadly force. It should be noted that the issue here is the right to use deadly force solely to affect the arrest. Frequently, issues of self-protection and protection of another arise during such encounters in which case there is no need to retreat and the officer may use deadly force on entirely different grounds. Subsection [b] deals with the use of force to prevent escape from custody. Subsection [g] deals with the use of force to prevent suicide or the commission of a crime.

§ 7.94. Use of Force by Person Having Special Care, Duty or Responsibility for Another.

The use of force upon another person is justified under any of the following circumstances:

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(a) a parent, guardian or other person responsible for the care and supervision of a minor less than eighteen years of age, or a person acting at the direction of such person, may use necessary force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct. The force used for this purpose must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;

(b) a teacher or a person otherwise responsible for the care and supervision of a minor less than eighteen years of age for a special purpose, or a person acting at the direction of such person, may use necessary force upon any such minor who is disruptive or disorderly for the purpose of maintaining order, restraining that minor or removing him from the place of disturbance. The force used for these purposes must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;

(c) a guardian or other person responsible for the care and supervision of an incompetent person or a person acting at the direction of the guardian or responsible person, may use necessary force upon the incompetent person for the purpose of safeguarding or promoting his welfare, including the prevention of his misconduct or, when he is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution. The force used for these purposes must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;

(d) a person responsible for the maintenance of order in a vehicle, vessel, aircraft, or other carrier, or in a place where others are assembled, or a person acting at the responsible person's direction, may use necessary force to maintain order;

(e) a duly licensed physician, or a person acting at his direction, may use necessary force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered: (1) with the consent of the patient, or if the patient is a minor less than sixteen years of age, or an incompetent person, with the

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consent of his parent or guardian or other person entrusted with his care and supervision; or (2) in an emergency, if the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerns for the welfare of the patient would consent.

SOURCE: M.P.C. § 3.08; *Mass. ch. 263 § 38; N.J. § 2C:3-8.

COMMENT: New Section. This Section deals with justification for the use of force by person who have special responsibilities for the care, discipline, safety or control of others such as teachers, parents, guardians and ship's captains.

§ 7.96. When Force Allowed by §§ 7.94 & 7.96 is Unavailable.

(a) The justification afforded by §§ 7.84 to 7.92, inclusive, in unavailable when:

(1) the defendant's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

(2) his error is due to ignorance or mistake as to the provisions of this Code, any other provision of the criminal law or the law governing the legality of an arrest or search.

(b) When the defendant believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under §§ 7.82 to 7.94 but the defendant is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those Sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(c) When the defendant is justified under §§ 7.84 to 7.94 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk or injury to innocent persons, the justification afforded by those Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

SOURCE: *M.P.C. § 3.09; N.J. § 2C:3-9.

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CROSS-REFERENCES: §§ 7.84 through 7.92 of this Code.

COMMENT: Subsection [b] makes the defense unavailable whether the defendant is reckless or negligent in having the belief of the justifiability of his actions. Subsection [e] makes the defense unavailable when the defendant recklessly or negligently, in his use of force, injures or creates a risk of injury to innocent persons when the prosecution is because of his use of force against such innocent persons.

§ 7.98. Justification in Seizure of Property.

Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense of privilege in a civil action based thereon, unless:

(a) the Code or the law defining the offense deal with the specific situation involved; or

(b) a legislative purpose to exclude the justification claimed otherwise plainly appears.

SOURCE: *M.P.C. § 3.10; N.J. § 2C:3-10.

CROSS-REFERENCES: See Section 7.80 of this Code.

COMMENT: Section 7.98 is addressed only to the taking, damage or destruction of property and any justification which might exist with respect thereto. This Section adopts the view that in this area the Penal law must accept, on the whole, and build upon the privileges recognized in the law of torts and property, except in those rare situations where a Penal Law departure from the Civil law is made clear.

ARTICLE 5
CASTLE DOCTRINE ACT

SOURCE: Entire article added by P.L. 32-111 (Feb. 10, 2014) as §§ 37.70-37.73 of Title 9 GCA. Recodified by the Compiler pursuant to the authority granted by 1 GCA § 1606.

- § 7.111. Legislative Findings and Intent.
- § 7.112. Home Protection, Use of Deadly Force, Presumption of Fear of Death or Harm.
- § 7.113. Immunity from Criminal Prosecution and Civil Action.
- § 7.114. Severability.

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§ 7.111. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action from acting in defense of themselves and others.

I Liheslatura further finds that the “Castle Doctrine” is a common-law doctrine of ancient origins that declares that a person’s home is his or her castle.

I Liheslatura further finds that persons residing in or visiting Guam have a right to remain safe.

Therefore, it is the intent of *I Liheslatura* that no person or victim of crime should be required to surrender his or her personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

§ 7.112. Home Protection, Use of Deadly Force, Presumption of Fear of Death or Harm.

(a) A person is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily injury to another if:

(1) the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully or forcefully entered, a business, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person’s will from the business, residence, or occupied vehicle; and

(2) the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(b) The presumption set forth in Subsection (a) *does not* apply if:

(1) the person against whom the defensive force is used has the right to be in or is a lawful resident of the business, residence, or vehicle, such as an owner, lessee, or titleholder, and there is *not* an injunction for protection from domestic

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violence or a written pretrial supervision order of no contact against that person; or

(2) the person who uses defensive force is engaged in a criminal activity or is using the business, residence, or occupied vehicle to further a criminal activity; or

(3) the person against whom defensive force is used is a uniformed law enforcement officer who enters or attempts to enter a habitable property, residence, or vehicle in the performance of his or her official duties, and the officer identified himself or herself in accordance with applicable law, or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(c) A person who unlawfully and by force enters or attempts to enter a person's business, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(d) As used in this Section, the term:

(1) *habitable property* has the meaning provided by § 34.10. Habitable property, as used in this Section, are limited to business buildings, for which the victim has beneficial control and use; and residences, vehicles and house boats for which the victim has a legal right to occupy.

Habitable property, as used in this Section, *does not* include yards or outdoor spaces surrounding business buildings, residences, vehicles or house boats. Nothing herein is construed to limit the right of a victim to use defensive force in a manner consistent with Chapter 7 of Title 9, GCA in areas outside of his home, business, car or house boat.

(2) *business* means habitable property that is lawfully used to conduct commercial activity by duly licensed corporations, LLCs, partnerships or sole proprietorships.

(3) *residence* as used in this Chapter, means a habitable property in which a person resides, either temporarily or permanently, or is visiting as an invited guest.

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(4) *vehicle* is defined in § 1102 and § 5101 of Title 16, GCA.

(5) *Defensive force* has the same meaning as *self defense* as used in Chapter 7 of Title 9, GCA, *except* that a lawful occupant of habitable property has *no* duty or obligation to retreat.

§ 7.113. Immunity from Criminal Prosecution and Civil Action.

(a) As used in this Section, the term *criminal prosecution* includes arresting, detaining in custody, and charging or prosecuting the defendant.

(b) A person who uses force as permitted in § 7.112 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, *except* when:

(1) the person against whom force was used is a law enforcement officer, as defined by public law, who was acting in the performance of his or her duties, and the officer identified himself or herself in accordance with applicable law; or

(2) the person using force knew or reasonably should have known that the person was a law enforcement officer; or

(3) the use of force is found to be unlawful or was found to have been exercised with any illegal activity.

(c) A law enforcement agency *shall* use standard procedures for investigating the use of force as described in Subsection (b), but the agency may *not* arrest the person for using force *unless* it determines that there is probable cause that the force that was used was unlawful.

(d) The court *shall* award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff *if* the court finds that the defendant is immune from prosecution as provided in Subsection (b).

§ 7.114. Severability.

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If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or application of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.



SENATOR THERESE M. TERLAJE

Committee on Health, Tourism, Historic Preservation, Land and Justice

I Mina' trentai Singko na Liheslaturan Guåhan
35th Guam Legislature

COMMITTEE REPORT DIGEST

I. OVERVIEW

The Committee on Health, Tourism, Historic Preservation, Land and Justice convened a virtual Informational Forum on *the Right to Self-Defense on Guam*, on Monday, June 15, 2020 at 9:00 AM in *I Liheslaturan Guåhan's* Virtual Conference platform.

Public Notice Requirements

Notices for this Informational Forum were disseminated via email to all Senators and all main media broadcasting outlets on Monday, June 8, 2020 (5-Day Notice) and again on Thursday, June 11, 2020 (48-Hour Notice). The notice was also published in the Guam Daily Post on Monday, June 08, 2020 and Thursday, June 11, 2020.

Senators Present

Senator Therese M. Terlaje	Committee Chairperson
Vice Speaker Telena C. Nelson	Committee Member
Senator Joe S. San Agustin	Committee Member
Senator Kelly Marsh (Taitano, PhD)	Committee Member
Senator Mary Camacho Torres	Committee Member
Senator James Camacho Moylan	Committee Member
Senator Régine Biscoe Lee	
Senator Jose "Pedo" Terlaje	
Senator Telo T. Taitague	
Senator William M. Castro	

Appearing Before the Committee

Assistant Attorney General Sean Brown, Office of the Attorney General of Guam
Chief Deputy Attorney General Shannon Taitano, Office of the Attorney General of Guam

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Deputy Director John P. Morrison, Public Defender Service Corporation

Written Testimony Submitted by:

Assistant Attorney General Sean Brown, Office of Attorney General of Guam
Deputy Director John P. Morrison, Public Defender Service Corporation

II. Summary of Testimony & Discussion

The Informational Forum was called to order at 9:00AM. Prior to hearing from the panel, Chairperson Therese Terlaje informed of public hearing notice dates, in compliance with Open Government Law and the 35th Guam Legislature's Virtual Hearing guidelines.

Chairperson Therese M. Terlaje: I would like to acknowledge the presence of my colleagues this morning and thank them for being here, of course. Starting with Senator Joe San Agustin, Senator Jim Moylan, I'm sorry, the Vice Speaker. I don't have a list, so forgive me. I'm going from this screen. So, Vice Speaker Nelson, Senator Régine Lee, Senator "Pedo" Terlaje, Senator Telo Taitague and Senator William Castro. Thank you for being here. I caught all the Senators. Thank You again my colleagues for being here this morning.

So, we will begin now on the Informational Briefing on the existing right to self-defense on Guam. In preparation for discussing or changing self-defense laws on Guam, it's the goal of the Committee on Justice that the committee members, the entire legislature and the public be fully informed of the current state of Guam's self-defense law, and its effectiveness in protecting individuals at home and in public places, the existing limits on the use of force for the purpose of defending one's own life, the lives of others in defense of property, the rates of successful claims of self-defense, along with challenges encountered in self-defense cases, and other relevant information on self-defense. Our goal is a comprehensive understanding of the right to use of force and use of deadly force on Guam prior to discussion of specific bills that may expand the allowable use of deadly force on Guam, including Bill 47-35.

I would like to thank the Chief Deputy Attorney General Shannon Taitano and Assistant Attorney General Sean Brown who joined us this morning, as well as the Deputy Director John P. Morrison from the Public Defender's Service Corporation who has also joined us and will be making presentations on the current right to self-

defense on Guam. We will then take brief questions from the panel and then we will move on to our second and third agenda items.

All right, so Assistant Attorney AG Sean Brown.

Assistant Attorney General Sean Brown, Office of Attorney General of Guam: Good Morning! Can you hear me?

Chairperson Therese M. Terlaje: There you are. Yes! Thank you. Thank you. You may begin.

Assistant Attorney General Sean Brown: Good morning Madam Chairperson, members of the Committee, men and women of the legislature. My name is Attorney Sean Brown. I'm a Criminal Prosecutor with the AG's office. I've been here for about eight years. I've been an attorney on the island for about nine and a half years. Currently, I'm assigned to Violent Crimes. Previously, I was the property crimes prosecutor. I've worked in DUI, family violence and just about every crime that's possible on Guam. I've prosecuted it. I've been in trial at least forty (40) times on the island and I've experienced self-defense as a prosecutor several different ways. My goal here today is to give a brief presentation on self-defense. How a prosecutor sees it.

And I'll start off by saying that we see self-defense come up in two phases. The first phase that we see is in the charging phase. When a prosecutor thinks about charging a suspect with a criminal case, we first determine if that person has any defenses available to that to him before we charge the case. Where we see self-defense come up a lot is homicide cases, aggravated assault, misdemeanor assault and family violence. That's where we see self-defense come up. And almost every single homicide case that's been charged, self-defense is at least somewhat an issue. And before we charge the case, we look at it and we make our own determination if we believe that self-defense was engaged here. If the person who committed the crime, did they have to protect themselves? And before we charge the case, we make that determination. And if we don't believe self-defense exists, then of course we charge the case.

The second phase where prosecutors will see self-defense is at trial. Either the defendant or the defense attorney will ask the court for jury instructions for the jury to consider self-defense. And if the court allows that, then it actually is quite burdensome for the people because it adds an extra element to the charges. So, we have to then prove beyond a reasonable doubt to the jury, not just that a crime occurred, but also that the defendant was not acting in self-defense, okay. The standard on Guam for whether or not the jury considers self-defense is put forward and people be root.

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Essentially if there's any evidence at all, then the defendant is entitled to the instruction and that means it becomes the people's burden to disprove self-defense. And that's why whenever there's, whenever there's law that's being updated or added or changed, we have to be careful because that could be confusing to a jury. It could be misused by a defendant potentially at trial. And that's when the prosecutor is most concerned, is that if self-defense is being claimed, well maybe it's not legitimate. And that's when it causes people or the prosecutor the biggest amount of problems.

Okay. Now let's talk about self-defense and what it actually is. Okay so there's two types of self-defense on the books right now. There's deadly force self-defense and protective force self-defense. Deadly force self-defense is essentially, any force used to protect oneself if that force can cause death or serious bodily injury. The best examples I can give of what deadly force self-defense looks like is a firearm, a knife, a bat, maybe a motor vehicle. Now there's a lot of gun holders on Guam as we know. And a firearm is kind of unique. Unlike a knife, a bat or a gun; those who have common everyday uses. A firearm is usually reserved for just one thing and that is to potentially kill somebody. So, firearms and knives, that's what we see most often when we talk about deadly force self-defense.

Okay now there are three limitations to deadly force self-defense, okay. The first limitation is that it has to be in response to somebody who might be experiencing death, serious bodily harm, kidnapping or CSC. So, has, the initial harm or danger or threat has to be quite serious before somebody can engage with deadly force self-defense.

Okay I have an example I would like to use. So, I think it might be helpful. Let's say I'm at the Kmart parking lot and I get into a fender bender with somebody else. It's my fault. I even say to the other driver, "I'm sorry for bumping into your car". The other driver for some reason is very upset. They get out of their vehicle and they start yelling at me, threatening me. They reach out into their vehicle and grab a tire iron which is a very heavy metal tool used for changing tires. They start approaching. Yelling at me. Threatening to kill me. They raise the tire iron above their head, and they come very close to me. I can then use a knife or a firearm to defend myself. I can use deadly force at that point because I could experience death or serious bodily injury if I don't protect myself. That's the best example I can give of deadly force.

Now there's two other limitations for deadly force self-defense. The second limitation is someone cannot have provoked the need first for deadly force. So, if someone starts a fight or starts being violent and then they react, another person reacts and then they

re-act with deadly force; they don't get to claim self-defense because they provoked the need for it. They're initial, you're the initial aggressor so they don't get to claim deadly force self-defense.

Okay, the third limitation is probably the one I think most of the Senators are interested in is someone cannot use deadly force self-defense if they could, with complete safety retreat or flee or walk away. So, if someone is experiencing a threat but can just easily walk away, they're not allowed to engage in deadly force self-defense, okay. Now in Guam Law that is, there's a, there's an exception to that limitation okay. In Guam Law in self-defense, already in the books, if someone is in their dwelling, vehicle or place of work; they don't need to retreat. Okay they don't need to flee. They can use deadly force self-defense already. That's already in the books. That's 9GCA Statute 7.86 b2A. Okay.

Now that is very different from protective force. And we're going to talk about that next okay. Protective force is basically any force that doesn't reach the level that deadly force does. Someone cannot die. There cannot be serious bodily injury. In the best example I can give you all. Protective force is simply one's hands. Okay. A push, shove or a punch. That's our most common experience with protective force self-defense. An example of that would be, again, we're at a Kmart parking lot. I get into a fender bender with somebody else. I even tell the individual, "Man, I'm sorry for hitting your car. I apologize." They get out of their vehicle very irate, angry. No weapon. No tire irons. They simply walk up to me and they start shoving me in the chest. That causes me pain, bodily injury or they keep shoving me. I'm allowed to then use protective force. Not deadly force, because my life's not being threatened. I'm not, I'm not experiencing potentially serious bodily injury, death, kidnapping or CSC. Okay. So, I can only respond with protective force like my hands. And yes, some people can, you can point to deadly force using their hands, but I'm talking about a simple strike to protect myself. That's the best example I can give.

Now there's two things I want to talk about regarding protective force and deadly force. Protective force - there is no duty to retreat. Okay. So, it doesn't matter if you're in the Kmart parking lot, home, vehicle, a school zone. It doesn't matter where you are. If you're only using protective force, one's hands, there is no duty to retreat or duty to flee. Now the last thing that I think is very important to know for both deadly force self-defense and protective force self-defense is that there's an immediacy requirement. One cannot respond with any self-defense if there's not an immediate threat. The best example I can give of that is if someone's 30 or 40 feet away across the street yelling obscenities at another person. They've even threatened that person. I cannot use any

form of self-defense in the streets because that person is not an immediate threat to me. Okay, it's a future threat at best. I still have the ability to walk away or I could maybe stand my ground. I could just stay right there, and they may not lead up to nothing. We don't know. Now once they start advancing, that might change the situation. But again, for someone to use deadly force or protective force that has to be an immediate threat. Okay so that is the best ten-minute summary I can give of what self-defense looks like to a prosecutor that I think would help understand that it looks like in the real world where we see it the most. And again, that is homicides, aggravated assaults and family violence, misdemeanor, assaults; that where we see self-defense most often. Okay, thank you so much for your time.

Chairperson Therese M. Terlaje: Thank you very much Attorney Brown. Thank you very much. And we're going to hear now from the public defender's office Deputy Director John Morrison. John.

Deputy Director John Morrison, Public Defender Service Corporation: Thank you, senators, committee members. I think attorney Brown's summation is fair. I'm not sure if he's still teaching at UOG as an adjunct professor, but I think that presentation was accurate as far as the public defender is concerned. We do see it a little bit differently at times. Some of the individual elements he spoke about; the duty to retreat, the knowing that you can safely retreat. These are unfortunately split-second decisions that have to be made. Sometimes there's a weaker person that's being set upon by larger individuals and it's just difficult to tell, in a split second, if deadly force was going to be used against this person or not. So, those are sometimes the issues that we face at trial. I mean, the speed in which somebody has to make this decision is basically, in my view you know, all the coherent thoughts you've had while you're like slipping on your kitchen floor. I mean, your brain just basically seems blank when that's happening, and you are just sort of thinking about righting yourself and surviving. So those are the issues that we see at a trial. I would agree that this is a decision that's made as a charging decision. And then at trial, there's an additional element from our perspective and that is, it's sometimes something that we discuss with the Attorney General in furtherance of negotiating a case. The self-defense law on Guam is, as Mr. Brown, as Attorney Brown referenced; the government does have to disprove that beyond a reasonable doubt, if it's invoked at trial and the facts support it. I personally have tried many cases on Guam and other jurisdictions. I've used self-defense as the defense a number of times. And I think the juries have always, under existing law, given my clients fair consideration based on how it's written and modified by our Supreme Court. I'll speak in a little more length about the proposed Bill 47-35. But I think that fairly sums up where we see self-defense claims as far as our office is concerned.

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Chairperson Therese M. Terlaje: Thank you very much Mr. Morrison. I'd like to also acknowledge the presence of Senator Mary Camacho Torres. Thank You, Senator. And I would now open it up to the panel for questions. Senator Joe San Agustin?

Senator Joe S. San Agustin: No, I have no question Madam Chair. I'm waiting for my bill. Then we can discuss it further.

Chairperson Therese M. Terlaje: All right, then if there's anyone who has a question for this panel? All right if not, Senator Taitague.

Senator Telo T. Taitague: *Si' Yu'os ma'ase* Madam Chair. Thank you for the opportunity. You know I was looking over the different scenarios with regards to self-defense, castle doctrine, stand your ground; all three perspectives. And, you know the...., on Guam, I guess in public defender or the attorney general's office, have you prosecuted in the past...what, the castle doctrine has been around for about six years now? Are you seeing any issues when going to court to basically not have an issue with castle doctrine? You know? I get, so I guess Mr. Morrison, public defender. I guess that question could be to you. Are you finding any issues on having cases dealing with castle doctrine to win your case, in other words?

Deputy Director John Morrison: Senator, so I think some of this may occur as far as the attorney general's charging decisions go, so we haven't seen those cases. I'm unaware of a case where deadly force was used against someone in the commission of a home invasion or anything on Guam since the castle doctrine has been in place. I just don't recall seeing that. There was one case where my office sought to invoke it, but it was, the defense was imperfect based on the facts and I believe that case was resolved by plea negotiation.

Senator Telo T. Taitague: Hmm. Well I guess you know the bill, because we're going to go down a bill that has stood your ground; maybe if there's some other information with regards to other jurisdictions that have switched and extended their laws to allow you know stand your ground further out. Have you any kind of information with regards to how it would be helpful, in these circumstances when it comes to castle doctrine versus standing your ground and any perspective on that that you've heard? The pros and the cons basically.

Deputy Director John Morrison: Senator, for the public defender, I spent the weekend reading a report from the United States Commission on Civil Rights titled -

Examining the Race Effects of Stand Your Ground Laws. And it seems like the conclusion of this report from that office is that these Stand Your Ground laws are frequently; you don't exactly end up with the result that you think you're going to. That more times than not, a person who used deadly force had a potentially criminal background. That these are much more likely to be invoked in situations where there's a fight that's escalating as opposed to these sorts of worst-case scenarios where homes are being invaded. So, I think that's something to be cautious about in this type of legislation. Additionally, it seems as though these types of laws have been misapplied. The commission's report suggests that there's ten times more, it's ten times more likely...well let me back up a little bit because the law still requires either the police or prosecuting authority to make a determination if the stand your ground law should apply and they should not charge. Basically, the commission's report as I read it says, when it's a white person who is using deadly force against a black person; it's going to be believed ten times less frequently. That there's still a racial disparity here. That's from the commission's report.

Chairperson Therese M. Terlaje: Senator, if it's all right with you, we can move on to the stand your ground bill and talk about that in specifics. I'd like the author to be able to introduce it.

Senator Telo T. Taitague: Just one more question. Just one more question. I just want to ask the attorney. What is civil immunity? With regards to self-defense, since we're you know, I'll go to self-defense. What is civil immunity? I read that somewhere. What does that mean?

Deputy Director John Morrison: So, as I read it senator, the law requires proof beyond a reasonable doubt. I think we all know that to get a criminal conviction the law does not require such an owner as a standard for a civil disagreement where it's just money at stake. So, what this bill would mean is that if deadly force was used and a civil jury could find that it was improperly used, that would just never come to pass and there'd be civil liability. Someone could always claim this in their motion to dismiss that they're invoking stand your ground and that they can't be made to forfeit monies.

Senator Telo T. Taitague: Okay. Well thank you so much Attorney Morrison. Thank you, madam chair. Thank you.

Chairperson Therese M. Terlaje: Thank you. Any other senators have questions regarding the information provided thus far? All right. Just Attorney Brown, when

you talked about the retreat except in your home, Guam law also provides, I didn't hear maybe you did say it, if you're in your car and at work. Is that correct?

Assistant Attorney General Sean Brown: Yes, Senator Terlaje. Under 9 GCA 7.86 (b) (2) (A), the defendant is not obliged to retreat from his dwelling, place of work or vehicle. So what that means is, if someone is inside their vehicle, this is without the Castle doctrine, if someone's inside their vehicle and someone is attempting to enter their vehicle and that entrance of their vehicle could cause them death, serious bodily injury, kidnap or CSC; the person inside the vehicle could definitely use self-defense deadly force to protect themselves. That's under the existing statutes of self-defense.

Chairperson Therese M. Terlaje: Alright. Okay. Thank you very much. Is there...Attorney Brown or Attorney Morrison, was there anything else you wanted to add, or we'll move on to the stand your ground bill itself?

Deputy Director John Morrison: There's nothing else from the public defender. Thank you, Senator.

Chairperson Therese M. Terlaje: Alright thank you. Thank you both. Let me recognize Senator Kelly Marsh Taitano who has also joined us this morning.

Thank you again and Thank you to all my colleagues.

The public hearing was adjourned at 9:25 AM.

III. FINDINGS & RECOMMENDATIONS

By request of the Committee, Assistant Attorney General Sean Brown and Attorney John Patrick Morrison, Deputy Director of the Public Defender Service Corporation presented an evaluation of Self Defense Law on Guam. The following is a summary of points provided with each presentation:

Assistant Attorney General Sean Brown provided the following evaluation points during his presentation on Self Defense Law on Guam:

- There are two (2) phases of self-defense: (1) the charging phase and (2) the trial phase.
 - At the charging phase, when a prosecutor thinks about charging a suspect with a criminal case, it is first determined if a person has any defenses available to them.
 - Self-defense commonly comes up in cases involving homicide, aggravated assault, misdemeanor assault, and family violence and is “somewhat an issue” in “every single homicide case that has been charged.”
 - Before charging a case, the Attorney General’s office makes its own determination if it is believed that self-defense was engaged- if the person who committed the crime had to protect themselves.

- At the Trial Phase, either the defendant or its counsel will ask the court for a self-defense jury instruction for the jury to consider. According to Attorney Brown, if the court allows it, it becomes “quite burdensome for the People because it adds an additional element to the charges for the People to provide beyond a reasonable doubt to the jury that not just that crime occurs, but also that the defendant was not acting in self-defense.”

- The standard on Guam for whether the jury considers self-defense is in *People v. Root*, 2005 Guam 16. If there is any evidence at all of self-defense, then the Defendant is entitled to the instruction and the burden shifts to the people to disprove self-defense.

- There are two types of self-defense: (1) deadly force and (2) protective force. According to Attorney Brown, deadly force is essentially any force that can be used to protect oneself if that force can cause death or serious bodily injuries.

- There are three limitations to deadly force:
 - It must be in response to someone who might be experiencing death, serious bodily injury, kidnapping, or CSC.
 - Someone cannot have provoked the need first for deadly force.
 - If someone who is experiencing a threat can easily retreat, flee, or walk away, the person should retreat and is not allowed to engage in deadly self-defense. Under 9 GCA 7.86 (b) (2) (a), this duty to retreat does not apply if the person is in their dwelling, vehicle, or place of work.

- Under current law, § 7.86 (b) (2) (A) of Chapter 7, Title 9 Guam Code Annotated, “the defendant is not obliged to retreat from his dwelling, place of work or vehicle, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the defendant know it to be.” According to Attorney Brown, what this means is, if someone

is inside their vehicle and someone is attempting to enter their vehicle and that entrance of their vehicle could cause them death, serious bodily injury, kidnap or sexual assault, the person inside the vehicle could definitely use self-defense- deadly force to protect themselves. This subsection is under existing statutes of self-defense, without the Castle Doctrine which is codified in the next Article 5 of Chapter 7, Title 9 of the Guam Code Annotated.

PDSC Deputy Director John Patrick Morrison's provided the following evaluation points on Self Defense Law on Guam during his presentation and in written testimony submitted to the Committee after the briefing:

- Guam's Castle Doctrine Act, modeled after Florida legislation and enacted in 2014, created an exception to the retreat requirement and allows a person in his home, place or work, or vehicle, to use defensive force, including deadly force, to defend himself or another.
- Guam law outlines the justifiable use of a *reasonable* amount of force in an act of self-defense, when an individual reasonably believes that he/she is in immediate danger of unlawful bodily harm.

Guam Code Ann. § 7.84. "The use of force upon or toward another person is justifiable when the defendant believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion."

- The prevailing self-defense rule does not limit its application to "reasonable belief" but only to "an honest or actual belief that the situation involved threat of harm of sufficient magnitude and immediacy to justify defensive force used," according to Morrison.
- *Lethal* force is not justifiable unless the defendant believes that such force is necessary to protect him/herself against death, serious bodily harm, kidnapping or rape or sodomy compelled by force or threat.
- *Lethal* force is not justifiable if the defendant is the initial aggressor of a lethal conflict, or if the defendant knows he can avoid the necessity of using such force with complete safety by retreating.

- The requirement of proportionality relates to the amount of defensive force used and prohibits the use of excessive force. Specifically, an actor cannot use deadly force to repel a nondeadly attack. According to Deputy Morrison, there are two elements of the defense in this context:
 - The defendant must have reasonably perceived that the imminent attack created a threat to his life of serious injury.
 - The defendant must have reasonably perceived nondeadly force as inadequate to prevent this danger.

- Necessity and Duty Retreat:
 - According to Deputy Morrison the question of knowing when to safely retreat is an issue that is sometimes faced in trial. He expounded that the decision to use or not use deadly force is a difficult determination to make in a split second when a person may not be fully coherent because they are thinking about their survival in the moment.
 - Guam law follows the Model Penal Code that had adopted the common law rule requiring retreat when the actor uses deadly force. The failure to retreat is a circumstance to be considered with all the others in order to determine whether the defendant went farther than he was justified in doing, not a categorical proof of guilt. The retreat rule does not apply when the defensive force used does not rise to a lethal level capable of creating a substantial risk of causing death or serious bodily injury.
 - The retreat rule is only applicable if (1) it would not imperil the would-be defender, (2) if there is a place of complete safety available to the non-aggressor and (3) if the person under siege is aware that the place of safety exists. One threatened by an aggressor armed with a gun will rarely be able to get to a place of safety or be aware of it because of the exciting effect of the threat.
 - Modeled after Florida legislation and enacted in 2014, Guam's *Castle Doctrine Act* created an exception to the retreat requirement and allows a person in his home, place of work, or vehicle, to use defensive force, including deadly force, to defend himself or another. Guam law creates a presumption that a homeowner has a reasonable fear of imminent peril or death whenever another person is in the process of unlawfully and forcefully entering, or had unlawfully or forcefully entered, a business, residence or occupied vehicle. Under this law, the homeowner does not need to prove that the intruder presented the threat of death or serious bodily injury.

- There are three exceptions to the application of this presumption.
 - The presumption does not apply if the person against whom the defensive force is used has the right to be in or is a lawful resident of the business, residence, or vehicle.
 - The presumption does not apply if the person who uses defensive force is engaged in a criminal activity or is using business, residence, or occupied vehicle to further a criminal activity.
 - The presumption does not apply if the person against whom defensive force is used is a uniformed law enforcement officer who is acting in the performance of his or her official duties, and the officer identified himself or herself in accordance with applicable law, or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.
- The Act also creates a rebuttable presumption that a person who unlawfully and by force enters or attempts to enter a person's business, residence, or occupied vehicle is acting with the intent to commit an unlawful act involving force or violence.
- The Act provides immunity from criminal prosecution and civil action and authorizes law enforcement agencies to investigate the use of deadly force while prohibiting the agencies from arresting a person in these circumstances unless the agency determines that there is probable cause that the force the person used was unlawful.

The Committee further finds several court cases have interpreted Guam's Castle Doctrine law as follows:

- On October 27, 2020, the Superior Court of Guam in *People v. Anthony Gregory Mendiola* found that dismissal of the case was proper pursuant to Guam's Castle Doctrine law, notwithstanding that the gun was unregistered, and that Defendant was not the registered owner of the gun used in the shooting."
- In *People of Guam vs. Bryan David Keller*, CF0331-18, the Superior Court of Guam found on May 13, 2019, that the Castle Doctrine did not extend immunity to defensive force used outside of a vehicle.
- In *People v. Xo Isi John*, 2016 Guam 41, the Supreme Court of Guam considered whether a porch or patio is within the reach of Guam's Castle Doctrine. The

Supreme Court held that because the Castle Doctrine Act specifies that a residence is habitable property and habitable property does not include yards or outdoor spaces, an attached porch “is not included within the province of the Castle Doctrine Act as adopted in Guam.”

The Committee finds that based on the evaluation of the right to self-defense in Guam Law provided by the Office of the Attorney General and the Public Defender Service Corporation,

- Current self-defense law as codified in Chapter 7, Title 9 of the Guam Code Annotated, outlines the basic rule for self-defense as a justification, its limitations and the allowances. Definitions of *lethal force* and its limitations are also outlined to provide a framework for the determination of justification.
- Subsection 7.86. of Chapter 7, Title 9 of the Guam Code Annotated outlines the “*Duty to Retreat*” and justifications and limitations of the use of deadly force as a means of protecting against death, serious bodily harm, kidnapping or rape or sodomy compelled by force or threat. This framework within the law exists outside of the Castle Doctrine Act, which is codified in Article 5 of 9GCA.
- The composition of Guam’s current self-defense law permits for the application to a variety of cases. In cases where the evidence to support a self-defense justification is less defined or more complex, Guam law provides a legal framework for a jury to apply in order to determine justification and reasonableness of a person’s conduct relative to the use of protective and lethal force.
- Both Attorneys Brown and Morrison reiterated that Guam’s law provides for the prosecution to prove beyond a reasonable doubt that self-defense did not occur, if it should be invoked, with Attorney Morrison stating that this provision makes Guam’s self-defense law more robust than most other states in the nation.