



# HOUSE OF REPRESENTATIVES

TWENTY-SECOND LEGISLATURE

COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH  
LEGISLATURE

P.O. BOX 500586 SAIPAN, MP 96950

**CELINA R. BABAUTA**

CHAIRPERSON

JUDICIARY AND GOVERNMENTAL OPERATIONS COMMITTEE

*Adopted - 2/22/2022*

STANDING COMMITTEE REPORT NO.

**22-36**

DATE: FEBRUARY 01, 2022

RE: H.B. 22-35

The Honorable Edmund S. Villagomez  
Speaker of the House of Representatives  
Twenty-Second Northern Marianas  
Commonwealth Legislature  
Capitol Hill  
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations to which was referred:

H. B. No. 22-35:

“To add a provision to prohibit convicted felons from possessing firearms and/or ammunition; and for other purposes.”

begs leave to report as follows:

## **I. RECOMMENDATION:**

After considerable discussion, your Committee recommends that H. B. No. 22-35 be passed by the House in its current form.

## **II. ANALYSIS:**

### **A. Purpose:**

The purpose of House Bill No. 22-35 is to add a provision to prohibit convicted felons from possessing firearms and/or ammunition; and for other purposes.

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**B. Committee Findings:**

Your Committee finds that pursuant to federal law, specifically 9 U.S.C. §922(g)(1), it is unlawful for any person convicted of a crime punishable by a term exceeding one year to possess any firearm. Furthermore, pursuant to 9 CMC §922(g)(9), any person convicted in any court of a misdemeanor crime of domestic violence is also prohibited from possessing a firearm. Despite the presence of such prohibitions in our federal laws and the enactment of the Special Act for Firearms Enforcement (SAFE), the CNMI does not possess any statute that relinquishes possession of firearms for convicted individuals. In a recent event, one male individual who has been previously convicted for a felony was in possession of a firearm. He kidnapped a female individual, later resulting in her death. Your Committee finds that these types of situation are intolerable and should never plague our islands ever again for the safety of our communities.

Your Committee further finds that all states within the United States have enacted laws that in which any person convicted of a crime loses their firearms rights.<sup>1</sup> Such states include California, Hawaii, Nevada, Alabama, and so forth. For some states, they have time limitations when such rights can be restored. For some other states, convicted felons can have their rights restored through either expungement and/or pardon. As a territory of the United States, we must upgrade our firearms laws to ensure greater protection to all our residents. We must not wait for another individual to become a victim at the hands of a convicted individual while in the possession of a firearm. Therefore, your Committee agrees with the intent and purpose of House Bill No. 22-35 and recommends its passage in its current form.

**C. Public Comments/Public Hearing:**

The Committee received comments from the following:

- Mr. Douglas W. Hartig, Chief Public Defender, Office of the Public Defender

The Public Defender opposed the proposed legislation.

- Honorable Edward Manibusan, Attorney General, CNMI Office of the Attorney General

The Attorney General supports the proposed legislation.

**D. Legislative History:**

House Bill No. 22-35 was introduced by Representative Celina R. Babauta on March 16, 2021 to the full body of the House and was referred to the House Standing Committee on Judiciary and Governmental Operations for disposition.

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<sup>1</sup> <https://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges/>



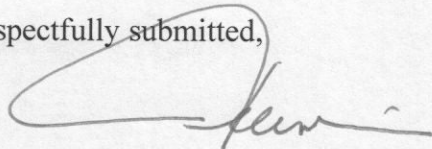
E. Cost Benefit:

The enactment of House Bill No. 22-35 will result in additional cost to the CNMI government in the form of additional equipment, staff and training needed to ensure the prohibition of gun use for certain convicted individuals. However, the benefits of protecting the general public from such dangers heavily outweigh the costs.

**III. CONCLUSION:**

The Committee is in accord with the intent and purpose of H. B. NO. 22-35, and recommends its passage in its current form.

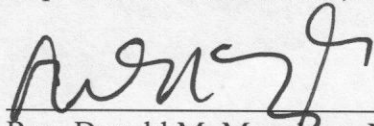
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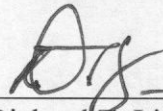
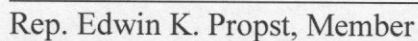
Rep. Celina R. Babauta, Chairperson



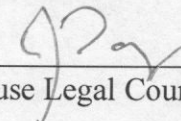
Rep. Vicente C. Camacho, Member



Rep. Donald M. Mangiona, Member

  
Rep. Blas Jonathan "BJ" T. Attao, Vice Chair  
Rep. Richard T. Lizama, Member  
Rep. Christina M.E. Sablan, Member  
Rep. Edwin K. Propst, Member

Reviewed by:

  
House Legal Counsel

Attachment:

- Letter dated April 30, 2021 from the Chief Public Defender; and
- Letter dated May 5, 2021 from the CNMI Attorney General.



**Office of the Public Defender  
Commonwealth of the Northern Mariana Islands**

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April 30, 20210

Rep. Celina R. Babauta  
Chair, Judiciary and Governmental Operations Committee  
22nd House of Representatives

Re: HB 22-7, 22-35, 22-37, 22-38, 22-39, 22-40, 22-41

Dear Chair;

Thank you for the opportunity to comment on these bills.

Several bills recently proposed in the House and the Senate will, if passed, move the CNMI criminal justice system in the wrong direction. The Senate is already considering a number of problematic bills, including ones that seek to keep more people in jail without the right to bail, impose mandatory minimum sentences for certain crimes, and increase the maximum and minimum penalties for other crimes. In contrast, the nationwide trend based on evidence has been to try to eliminate unfair cash bail systems, delete mandatory minimums, and reduce lengthy prison sentences that have been empirically shown not to deter or reduce crime. The bills before the Senate and the House currently stand in stark contrast to attempts at criminal justice reform in the rest of the country.

There are certainly issues that are in need of reform in our criminal justice system, but the proposed bills before this committee do not address the actual issues that need reform. These bills would simply perpetuate a criminal justice system that is overly costly, that fails to address the root problems that lead to criminal behavior, that is punitive rather than rehabilitative, and that uniquely harms low-income people. While the rest of the United States is largely moving away from mandatory minimum sentences and jail time for minor infractions, these



proposed bills will move the CNMI in the wrong direction, and it would not have the intended effects of making the CNMI a safer place or making the legal system more "just."

The bills before the House do not meet the best practices being implemented in other jurisdictions; moreover, there is no demonstrated need for most of the changes proposed in these bills. The author of the bills makes unsupported assertions about purported rises in criminal activity by felons and by prisoners and a rise in incidences of failures to appear in court. But none of these claims are based in data or in reality. These bills are the subject of the following comments.

### **H.B. 22-7 Contraband Reform Act of 2021**

The Office of the Public Defender opposes this bill because it is unnecessary and redundant, overly broad, and overly harsh.

First, the proposed bill is unnecessary and redundant because Title 57 of the Administrative Code already provides Department of Corrections rules and regulations that adequately address and punish possession of contraband within the corrections facility. Section 57-20.1-810 prohibits possession of contraband and makes the prisoner involved subject to disciplinary action. Section 57-20.1-1105 makes visitors to the facility subject to search and "Any weapons, illegal substances, or other contraband found on a visitor as the result of the search will make the visitor subject to criminal prosecution." There is no need to criminalize possession of contraband when the issue of contraband is already adequately addressed by existing DOC Regulations and criminal statutes.

Second, the proposed amendment is vague and overly broad. Subsections (a)(1)(D) ("Any item or article not authorized by the Department of Corrections regulations or in excess of the maximum quantity permitted or obtained from unauthorized source") and subsection (a)(1)(E) are unconstitutionally vague. They criminalize the possession of anything not expressly permitted, or anything in however slightly too great a quantity, or anything that was once permitted but suddenly isn't. This opens the door for abusive, arbitrary and capricious enforcement. Subsection (a)(1)(F) is also too broad and vague. It bans any

authorized property that has been altered. If a detainee sharpens a pencil, they have altered it: so have they committed a crime? What if a detainee hems their pants? This proposed bill is clearly intended to prevent defendant from altering items to turn them into weapons, but it is too vague to do so in an effective or constitutional way.

Third, the proposed punishment for any violation of contraband is a minimum of 30 days incarceration. This overly harsh provision allows no discretion for the Judge to look at the circumstance of the violation and whether it warrants 30 days in jail. This is an attempt to move the CNMI criminal justice system in the wrong direction, against the momentum of other states that have recognized the need for evidence-based reform. It is now widely understood that mandatory minimum sentences do not deter crime.<sup>1</sup> Most states and the Federal government are repealing mandatory minimum sentences.<sup>2</sup> Yet this bill runs completely counter to the bipartisan criminal justice reform occurring in other jurisdictions.

### **H.B.22-35 Unlawful Possession of a Firearm or Ammunition by a Felon.**

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<sup>1</sup> The U.S. Department of Justice has said that mandatory minimums do not deter crime. <https://www.ojp.gov/pdffiles1/nij/247350.pdf>. Studies by investigative organizations and not for profits have confirmed this. <https://www.pbs.org/newshour/politics/5-charts-show-mandatory-minimum-sentences-dont-work>. And yet this bill, on the other hand, has no basis in research or statistics and goes against the research trends in criminal justice reform.

<sup>2</sup> The Federal justice system as well as the states are abolishing archaic mandatory minimum sentences because it is now widely understood they don't deter crime and far too often have unintended consequences. Prof. Michael Tonry of the University of Minnesota School of Law and Public Policy has written that

*There is no credible evidence that the enactment or implementation of such sentences has significant deterrent effects, but there is massive evidence, which has accumulated for two centuries, that mandatory minimums foster circumvention by judges, juries, and prosecutors; reduce accountability and transparency; produce injustices in many cases; and result in wide unwarranted disparities in the handling of similar cases. ... If policy makers took account of research evidence, existing laws would be repealed and no new ones would be enacted.*

<https://www.jstor.org/stable/10.1086/599368?seq=1>. The National Institute of Justice has found that increased punishments do not deter crime. <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>. Many studies have come to the same conclusion. See: <https://newsroom.unsw.edu.au/news/business-law/do-harsher-punishments-deter-crime>.



The Office of the Public Defender opposes this bill. It purports to be about “felons in possession of a firearm”. But while the title of the proposed amendment and the findings speak about felons, the actual amendment sneaks in a provision to apply also to certain minor misdemeanor convictions.

In addition to prohibiting people convicted of a felony from possessing firearms, the bill also includes language that will prohibit citizens convicted of certain minor misdemeanors from being able to own a gun in the CNMI. Under the proposed legislation, conviction of the relatively minor offense of disturbing the peace of a family member—an offense that carries a maximum punishment of no more than six months—would expose the convicted person to a felony punishable by up to 10 years in prison for possessing a firearm that currently they are not barred from possessing. No other state imposes such a harsh sentence even for those with felony convictions. The majority of states have a 2-4 year range of punishment.

The Findings misleadingly claim that legislation is needed to stop events such as the police shootout that occurred last year where a female hostage was shot and killed. But this proposed law would have done nothing to prevent that situation, or to keep it from happening again. The gun involved in the referenced shooting was already illegally possessed, because it was a government-issued service weapon traded away by a corrections officer. What is worth considering is legislation to address the misuse of government-issued firearms by corrections officers.

#### **~~HB 22-36 Sentencing.~~**

~~The Office of the Public Defender opposes this bill because it conflicts with existing court rules, is likely unconstitutional, and runs counter to fundamental American principles of defendants’ rights to fairness in the legal process. The explanation that follows is somewhat technical in its legal arguments. But that simply proves that complex considerations of defendants’ rights are more properly addressed by the Commonwealth Supreme Court, the highest authority on legal interpretation in this jurisdiction. HB-22-36 should be rejected.~~

The Findings section of HB 22-36 misleadingly suggests that the Commonwealth Supreme Court decision in *Commonwealth v. Martin*, 2020 MP 10, invited the legislature to “clarify whether. . . individualized sentencing review should be altered.” The proposed bill demonstrates a fundamental misreading of the Court’s decision in *Martin* and a misunderstanding about appellate review of criminal sentences.

Notably, the Commonwealth Supreme Court in *Martin* pointed out that the practice of individualized sentencing in federal courts did not stem merely from statute, but from more fundamental principles of fairness that have been enforced by federal courts for decades.<sup>3</sup> The mandate for individualized sentencing comes from modern principles of fairness and justice that were explained by the United States Supreme Court as far back as 1949.<sup>4</sup> The legislature cannot and should not simply negate such a bedrock principle of modern criminal justice, nor can it negate Supreme Court Due Process jurisprudence.<sup>5</sup>

HB 22-36 proposes to overhaul the existing sentencing statute by eliminating the requirement that a Superior Court judge give “specific findings” to justify a sentence. This creates a dangerous window for abuse. It would permit a judge, for example, to give one defendant a maximum sentence simply because they were

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<sup>3</sup> *Martin*, 2020 MP 10 ¶ 16.

<sup>4</sup> “A sentencing judge. . . is not confined to the narrow issue of guilt. His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and characteristics. . . . [There is] a prevalent modern philosophy of penology that the punishment should fit the offender and not merely the crime. The belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender. This whole country has traveled far from the period in which the death sentence was an automatic and commonplace result of convictions—even for offenses today deemed trivial. . . . Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence. . . [A] strong motivating force for the changes has been the belief that by careful study of the lives and personalities of convicted offenders many could be less severely punished and restored sooner to complete freedom and useful citizenship. This belief to a large a large extent has been justified.” *Williams v. New York*, 337 U.S. 241, 247–49 (1949) (emphasis added) (internal citations omitted).

<sup>5</sup> “[I]ndividualized sentencing is not inextricably tied to a statute. Whether our sentencing rules emerge from case law or statute should not affect its force as law. Our lack of a statutory basis for such law, therefore, does not render our jurisprudence invalid.” *Martin*, 2020 MP 10 ¶ 16 (emphasis added).



Chamorro, and to give a different defendant convicted of the same crime a minimum sentence simply because they were Filipino. Under the proposed legislation, the judge would not have to give any reason for the different sentences, and it would thus make it very difficult for the Chamorro defendant to know what happened or challenge it.

Even more troubling, HB 22-36 proposes to go even further by removing the Supreme Court's jurisdiction to review a trial court's decision on sentencing "unless it involves an alleged preserved constitutional or procedural defect." The next sentence in the proposed legislation states that "[s]uch defect must be preserved by a timely, specific objection." This portion of the proposed legislation is blatantly unconstitutional. The legislature cannot pass a law that undermines a person's constitutional right to due process of law.<sup>6</sup> HB 22-36 is also incompatible with existing court rules and with the CNMI Constitution. When it comes to court procedure, the procedural rules of court control.<sup>7</sup> Moreover, the Commonwealth Supreme Court has the constitutional authority and duty to review final judgments from the Commonwealth Superior Court.<sup>8</sup> HB 22-36 cannot and should not take that away.

There are, unfortunately, prosecutors who believe that finality of a court judgment is more important than fairness. This proposed bill is an example of that.

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<sup>6</sup>In *Martin*, the Commonwealth Supreme Court pointed out that objections to the substantive reasonableness of a sentence—a Due Process constitutional challenge—are preserved simply by "inform[ing] the court what action it wishes the court to take. . ." *Martin*, 2020 MP 10 ¶ 9 (quoting *Commonwealth v. Reyes*, 2020 MP 6 ¶ 10-11 and *United States v. Holguin-Hernandez*, 140 S. Ct. 762, 766 (2020)). This standard is based on Criminal Rule of Procedure 52(b), which protects the right of a person to appeal their sentence because certain mistakes made in sentencing may undermine the fundamental fairness of the proceedings. "[C]ourts indulge every reasonable presumption against waiver of fundamental constitutional rights." *Johnson v. Zerbst*, 304 U.S. 458 (1938). The CNMI legislature may not legally take away appellate review of constitutional or procedural errors simply because of a defendant's failure to make a "timely, specific objection."

<sup>7</sup>"[T]he procedural rules of a court take precedence over statutes, to the extent that there is any inconsistency." *Reyes v. Reyes*, 2004 MP 1 ¶ 99. NMI Rule of Criminal Procedure 52(b) permits appellate review of Superior Court decisions under the plain error standard even where no objection was preserved.

<sup>8</sup>See N.M.I. Const. art. IV section 3 ("The Commonwealth supreme court shall hear appeals from final judgments and orders of the Commonwealth superior court." (emphasis added)).

A much better reform would be, as the *Martin* case suggests, for the legislature to give guidance to the courts in the form of a suggested list of aggravating and mitigating factors that court should consider. The legislation could ensure checks and balances and protect the court's discretion by permitting the court to consider other factors not on that list, but should continue to require, as it currently does, that the sentencing court explain how the factors were used in making a sentencing decision. This would eliminate confusion and allow all parties and the public to know why a particular sentence was given. It would also supply the supreme court with the information it needed, if the sentence is appealed, to decide if the sentence should be overturned. Instead, the proposed legislation does just the opposite of what openness and fairness demands.

#### **HB 22-37 Failure to Appear.**

The first line of the Findings is incorrect. A criminal penalty for failure to appear already exists in the CNMI. It is called Contempt, 9 CMC § 3307: "*Every person who unlawfully, knowingly, and willfully interferes directly with the operation and function of a court, ... or who resists or refuses or fails to comply with a lawful order of the court... is guilty of criminal contempt...*" And beyond criminal contempt charges, there already exist substantial penalties for a failure to appear in court, including forfeiture of bail money, revocation of release conditions, and withdrawal of plea offers. (Also, the "Findings" offer no data or statistics to support the assertion that there is little consequence for failing to appear in court—as seen above, this is incorrect. Nor does the Findings offer any factual data to support its argument that the current process wastes time or resources, or that many criminals become fugitives and just disappear.)

The punishment must fit the crime. There is no justification why a simple failure to appear in court is as serious an offense as the underlying crime that the defendant is charged with. Yet this proposed bill would punish failure to appear by up to five years in prison, even when the maximum sentence is much less or when the defendant may have been offered a year or less on the underlying felony. In



theory, this means that the failure to appear in court could be punished five times more harshly than the actual crime alleged to have been committed. Similarly, failure to appear on a traffic ticket could result in one year in prison, even where the traffic ticket itself was punishable by no more than a \$50 fine. If someone goes off island and misses court on a traffic ticket, then returns five weeks later and tries to go to court, they could face a year in prison. In addition to being patently disproportionate and unfair, this penalty would have the unintended effect of strongly discouraging people who innocently miss court from coming forward to get their case back on track.

Worst of all is the proposed 30-day requirement to put forth a defense. This is clearly unconstitutional and unjustifiable. Under the current statute of limitations, the prosecutor can file charges up to four years after the crime of "failure to appear" happens. But this bill would require the defense to put forth a defense within 30 days. *So a person has to defend himself more than three years before he is even accused?* This is nonsensical. If the court hears the person's explanation for their absence 32 days after the fact and finds the explanation reasonable, the fact that it is explained 32 days later does not negate that reasonableness. Imagine if a person has a serious injury or illness (e.g. heart attack, stroke, traffic accident) and is hospitalized or evacuated for medical care, they may not think to file an affidavit with the court within 30 days. Under the proposed legislation, they will have no excuse, and they may be put on trial and imprisoned, effectively because they got sick. And under the proposed legislation, they would not be allowed to put on a defense that explained their absence. The CNMI cannot create a crime and then bar someone from defending against it. To do so would be un-American and contrary to everything our legal system stands for.

People miss court for a myriad of innocent reasons: illness; family issues; car problems; fear of losing their job if they miss work; mental illness; forgetfulness. Most are not trying to avoid taking responsibility; many if not most simply make the very human mistake of forgetting a scheduled event. Under current law and practice, when a defendant misses court without an excuse, a bench warrant for their arrest is issued. If that person subsequently appears before the judge—which

they usually do—the judge always asks why the defendant missed court. If the judge finds that the defendant had a reasonable excuse the judge will forgive the absence and quash the warrant, and the case will continue. If the judge finds that the excuse was not reasonable, the judge already has a number of sanctions at their disposal, including revocation of bail and or charges of contempt of court.

The Public Defender's Office represents the vast majority of criminal defendants in the CNMI. A review of PDO's records shows that the vast majority of people who miss hearings are defendants charged with traffic offense, not serious crimes. There have been criminal cases where bench warrants were issued, but virtually all of those cases were resolved or are again active on the court docket after the defendant reappeared. The system clearly works. Defendants' failure to appear in court in the CNMI is not a significant problem.

Furthermore, there is a better way. A recent study, entitled "Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach" funded by the U.S. Department of Justice, found that "It is possible to reduce the risk of FTA (failure to appear) with a simple postcard reminder system. FTA rates varied across a number of offender and offense characteristics, such as geographic location, offense type and number of charges, and race/ethnicity. It is important to consider various offense and offender characteristics when devising and implementing pretrial services programs."<sup>9</sup>

For these reasons The Office of the Public Defender opposes this bill.

#### **H.B. 22-38 Discovery Of Evidence Of Child Abuse.**

This bill is an attempt to adopt a statute from Texas that has little precedent in other state or federal jurisdictions. It should be rejected. It is wholly unreasonable and unnecessary to pass such an extreme bill. The *PDO* agrees that sensitive material pertaining to children should carry additional protections and that the Court should have the authority to limit or prevent its dissemination to the *public*. The Court already has such authority. However, it would be improper to

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<sup>9</sup> <https://www.ojp.gov/pdffiles1/nij/grants/234370.pdf>.



prevent defense counsel from having access to these materials, which are necessary for trial preparation purposes.

Defense counsel require access to statements from victims and witnesses in order to adequately investigate and prepare their cases. Defense counsel has no incentive for such material to get into the public's hands—in fact, just the opposite! Furthermore, a licensed attorney is bound by ethical and legal obligations not to spread any of these materials. Instead, defense counsel's interest in obtaining a copy of these materials is to allow for more intensive review. For instance, in the case of an interview of a child witness reporting abuse, a defense attorney may go through the interview to transcribe what is being said. Defense counsel may also need to share such a video with an expert witness, such as a psychologist trained in interviewing techniques for victims of child abuse.

The Texas case cited in the Findings that indicates such a law does not violate the Texas constitution has no bearing in the CNMI. In that Texas case, a defense expert was still allowed to see the video. Here, the majority of expert witnesses that an attorney on Saipan might consult would be based off-island, so it would be particularly important to obtain a copy of the discovery to be able to share with the expert for review. An off-island expert would be unable to view the relevant materials at the prosecutor's office.

Rather than completely preventing defense counsel from obtaining a copy of these discovery materials, a more practicable approach, practiced in many jurisdictions<sup>10</sup>, would be for the prosecutor to provide the sensitive discovery pursuant to a protective order or signed stipulation that prohibits defense counsel and defendant's expert from unauthorized dissemination of the material. This solution can be accomplished without legislation, as most defense attorneys would readily agree to this. Also, a judge can place reasonable limitations on how the discovery in question can be shared with the defense.

The Court should not lose its discretion to order that relevant evidence be turned over to the defense. The Court can be trusted to make appropriate rulings to

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<sup>10</sup> See, e.g., Ohio Rule of Criminal Procedure 16; *State v. Boyd*, 158 P.3d 54, 62 (Wash. 2007); *U.S. v. Hill*, 322 F.Supp.2d 1081, 1092-93 (C.D. Cal. 2004).

protect the privacy of any child victims. The proposed legislation does not address a real problem here in the CNMI and concerns a subject that can be fairly dealt with by the judges in our courts.

#### **H.B. 22-39 Allowing Hearsay Statements In Certain Cases.**

The Office of the Public Defender opposes this bill, which would allow previously-inadmissible hearsay statements to be used as evidence in criminal trials. The bill attempts to create an exception to the hearsay rules for certain statements made by individuals 16 years old or younger or with certain disabilities. But hearsay rules serve a very important purpose in our courts: they weed out unreliable evidence that would not tend to support a finding of the truth. These rules are necessary to promote truth-seeking in court and to protect the constitutional rights of a defendant to due process and a fair trial. Moreover, these rules are codified in the Rules of Evidence and cannot be overridden by the legislature, as that is a function reserved for the judiciary.<sup>11</sup>

In addition to attempting to address subject matters more properly (and authoritatively) dealt with in Court rules, the proposed bill fails to provide sufficient background research to support the creation of a new rule that would have serious implications for the conduct of a fair trial. Although the proposed bill appears to be closely modeled after Article 38.072 in the Texas Code of Criminal Procedure, it tries to broaden the scope of the exception even more than the rule in Texas, while failing to provide any justification. For example, the proposed bill seeks to make admissible statements by individuals *16 years old and younger*, whereas the Texas statute only applies to minors less than 14 years old. No data or argument is provided as to why a court could not rely on the sworn testimony of a 16-year-old witness in court just as it would for a 17-year-old witness. Another change from the Texas statute is that this bill proposes to allow in the first "substantive" statement by someone under 16 to an adult rather than the actual

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<sup>11</sup> *Reyes v. Reyes*, 2004 MP 1 ¶ 99.



first statement made to an adult. Instead, what this bill would do is make otherwise-inadmissible statements made to forensic examiners admissible in court. This is unconstitutional: the admission of such testimony would run afoul of the Confrontation Clause of the U.S. and CNMI Constitutions because the statement could be considered “testimonial” in nature when made to adults involved in the investigation.<sup>12</sup>

The proposed bill also deviates from the Texas statute upon which it is based in that it would apply in a prosecution for *any offense* committed against a child 16 years of age or younger or a person with a disability. In contrast, the Texas statute only applies in cases involving child abuse, sexual abuse, or assaultive crimes against children or persons with disabilities. There is no rational explanation offered in the proposed bill for why a hearsay exception such as this one would ever be necessary in a prosecution for other types of crimes against minor victims, such as theft or burglary.

The proposed bill is also too broad in its definition of “person with a disability.” The definition provided is “a person 17 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person’s self from harm or to provide food, shelter, or medical care for the person’s self.” This definition is so overbroad that it would encompass individuals who are mentally sound and capable but have physical ailments that merely require mobility assistance. Finally, there is no research cited to show why the initial statement made by a person with a mental disability to an adult would have sufficient reliability to be admissible in court.

Statements by children and individuals with mental illness or learning disabilities pose difficulties in criminal trials because they can be inherently unreliable and can also be heavily influenced by interviewer bias and suggestive

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<sup>12</sup> See *Ohio v. Clark*, 576 U.S. 237 (2015). Even so, the fresh complaint rule already allows some statements to be allowed into evidence to counter an allegation that was said in court was recently made.

interviewing techniques.<sup>13</sup> Therefore, it is particularly important not to permit the introduction of out-of-court hearsay statements made by such witnesses without allowing the defendant the opportunity to cross-examine the witness. Any hearsay exception that can potentially take away the defendant's constitutional right to confront his or her accuser in court should not be promulgated without a much closer look at the ways in which various jurisdictions across the United States handle this issue and without a more thorough understanding of the social science and legal principles that might support such rule changes, if any. The CNMI should not look to a regressive jurisdiction such as Texas for guidance and then modify Texas law in a way to make it even more unfair, unjust and unconstitutional.

#### **HB 22-040 Jay walking.**

In theory, this jaywalking bill seems perfectly acceptable. It makes jaywalking a payable offense; it carves out an exception if the crosswalk is more than 200 feet away; and it seems to apply only to those "crossing" the street rather than walking along it.

But there is a risk of abuse of this provision by DPS. This bill could incentivize police to prey upon tourists to gain money for their department and unnecessarily exposes tourists to the requirement that they appear in traffic court, thereby disrupting travel plans and exposing them to the penalties of failure to appear that the legislature is considering criminalizing in HB 22-37.

A tourist could end up with jail time and a criminal record simply because they crossed the street to take a picture of the sunset. If a tourist gets a ticket but can't read English, they may not understand how or where to pay the ticket. In such an instance, a warrant could be issued, the person could be found guilty of failing to appear in court and they could face a year in prison.

I oppose this bill in its current form, but if such a bill is to become law, the fines should be more manageable such as \$20, \$30 and \$50 respectfully. People are more likely to pay a fine and deal with a ticket if they can afford to do so.

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<sup>13</sup> Bruck, M., & Ceci, S. J. (1997). The Suggestibility of Young Children. *Current Directions in Psychological Science*, 6(3), 75-79.



## **HB 22- 41 Removal Of Grace Period For Uninsured Motorist.**

The Office of the Public Defender opposes this bill because it is based on a false premise. Contrary to what is said in the legislative Findings and Purpose, currently there is no grace period for uninsured motorists. Under current law, every person who operates a motor vehicle must have insurance (9 CMC §8203). They must also have an insurance card in their car (9 CMC § 8204). If someone is stopped by DPS and they don't have a card in the vehicle to show the officer, they will be given a ticket for violation of *both* §8203 (no insurance) and §8204 (no insurance card in possession).

There is no grace period in which to get insurance. There is no time when someone is allowed to drive without insurance. But the current statutes provide a person charged with §8203 (no insurance) to show that they did have insurance at the time of the traffic stop but simply didn't have the card with them in their car. Often, the driver has lost their insurance card or left it at their house, but they actually did have valid, up-to-date auto insurance. Such individuals will still be charged for not having the card in the vehicle (§8204), but they need not be charged with not having insurance (§8203). A person should not be charged for a violation that the Commonwealth knows they did not commit.

Reforms are certainly needed in the criminal justice system here in the CNMI, but the bills proposed to the House this session do not address any real concerns in the community. They are founded on faulty reasoning and a lack of data.

The legislature should however consider changing the definition of felony theft so that our citizens will not be excluded from the military, denied the right to vote, disqualified for loans and be branded a felon for life simply for taking a used cell phone. We should increase the right to pretrial bail to preserve the family, jobs and the principal of innocent until proven guilty. We do not have a grand jury as guaranteed by the U.S. constitution but we could at least require a finding of probable cause to believe someone is guilty of a felony at a preliminary hearing to

weed out illegitimate allegations before they face the stress of a trial and the Commonwealth incurs the costs. We should not disallow courts from having latitude in sentencing but should require them to explain their rulings for the benefit of the accused and the general public. Through legislation the courts should be limited in their ability to deny someone's right to petition for parole so that a prison is encouraged rather than discouraged to reform and so that a convicted person's release is based on reformation as found by a board, not just the running of the clock.

The PDO would be happy to work together with the House Standing Committee on Judiciary and Governmental Operations to identify and propose evidence-based bills that can effectuate progress towards a fairer and just legal system and a safer community.

Thank you for the opportunity to submit these comments.

Respectfully,



Douglas W. Hartig

CC: Committee Members, Rep. Blas Jonathan Attao, Vice Chair, Rep. Vicente Camacho, Rep. Richard Lizama, Rep. Donald Manglona, Rep. Edwin Propst, Rep. Christina Marie Sablan





Commonwealth of the Northern Mariana Islands  
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May 5, 2021

OAGHOR: 2021-042  
LSR No. 21-126

Hon. Celina R. Babauta  
Chairperson, House Standing Committee  
on Judiciary & Governmental Operations  
House of Representatives  
22<sup>nd</sup> Northern Marianas Commonwealth Legislature  
Saipan, MP 96950

**Re: HB 22-35: "To add a provision to prohibit convicted felons possessing firearms and/or ammunition; and for other purposes."**

Dear Chairperson Babauta:

Thank you for requesting the comments of the Office of the Attorney General on House Bill 22-35. This bill notes that there is a gap in the CNMI weapon laws: the Special Act for Firearms Enforcement failed to criminalize the possession of firearms and ammunition by convicted felons. This bill fills that gap by adding such a provision to the Criminal Code.

Most jurisdictions, including federal laws, prohibit the possession of a firearm by a convicted felon. The United States Supreme Court has recognized that the Second Amendment Right to Bear Arms does not prevent such a provision. *District of Columbia v. Heller*, 554 U.S. 570 (2008) ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons").

The proposed legislation provides clear language identifying a felony (any offense with a possible punishment greater than one year confinement) and crimes involving domestic violence (by referencing CNMI definition).

Given the recent escalation of crimes in CNMI involving firearms possessed by felons, this addition to the Criminal Code provides additional protection to the public.

Sincerely,

EDWARD MANIBUSAN  
Attorney General

cc: All Members, House of Representatives

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TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

Session, 2021

H. B. 22- 35

A BILL FOR AN ACT

To add a provision to prohibit convicted felons from possessing firearms and/or ammunition; and for other purposes.

BE IT ENACTED BY THE 22<sup>ND</sup> NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:

1        **Section 1. Findings and Purpose.** The Legislature finds that in order to  
2        prevent the commission of violent crimes and deter the repetition of serious crimes,  
3        most jurisdictions criminalize the possession of firearms and ammunition by a  
4        convicted felon or a person convicted of family violence. Following the repeal of  
5        the Weapons Control Act in PL 19-73, the Legislature enacted the Special Act for  
6        Firearms Enforcement (SAFE) Act. However, that legislation neglected to include  
7        a provision prohibiting possession of a firearm or ammunition by a convicted felon.  
8        Consequently, the CNMI is unable to prosecute such cases.

9        The Legislature also finds that Federal law has consistently maintained such  
10       a law, see 18 U.S.C. 922(g)(1). A convicted felon has no constitutional right to  
11       possess a firearm or ammunition. See United States v. Anderson, 559 F.3d 348 (5<sup>th</sup>  
12       Cir. 2009, cert. denied). This bill simply provides for a CNMI-based law to



1 prosecute such cases. A convicted felon in CNMI recently possessed a firearm and  
2 kidnapped an individual, resulting in her death. Such cases show why felons and  
3 violent offenders should lose the right to possess a firearm or ammunition.

4 The Legislature further finds that the universal understanding of a felony is  
5 any offense punishable by more than one-year confinement. Therefore, the offense  
6 includes that as the trigger for prohibiting possession of a firearm or ammunition  
7 by a felon. CNMI law already defines domestic violence in terms of commission of  
8 a crime against a family or household member.

9 Therefore, the purpose of this Act is to add a provision to prohibit convicted  
10 felons from possessing firearms and/or ammunition; and for other purposes.

11 **Section 2. Amendment.** Subject to codification by the CNMI Law Revision  
12 Commission, Title 6, Division 10 of the Commonwealth Code is hereby amended  
13 by adding a new provision to read as follows:

14 **“§101. Unlawful Possession of Firearm or Ammunition by Felon.**

15 (a) A person who has been convicted of a crime in this or any other  
16 jurisdiction punishable by imprisonment for a term exceeding one year or  
17 any crime involving domestic violence commits an offense if he knowingly  
18 possesses a firearm or ammunition.

19 (b) In this section, “crime involving domestic violence” has the  
20 meaning assigned by 6 CMC section 1461(a)(1).

1 (c) An offense under this subsection is punishable by confinement  
2 up to ten years, a fine of up to \$10,000, or both.

3 **Section 3. Severability.** If any provisions of this Act or the application of  
4 any such provision to any person or circumstance should be held invalid by a court  
5 of competent jurisdiction, the remainder of this Act or the application of its  
6 provisions to persons or circumstances other than those to which it is held invalid  
7 shall not be affected thereby.


8 **Section 4. Savings Clause.** This Act and any repealer contained herein  
9 shall not be construed as affecting any existing right acquired under contract or  
10 acquired under statutes repealed or under any rule, regulation, or order adopted  
11 under the statutes. Repealers contained in this Act shall not affect any proceeding  
12 instituted under or pursuant to prior law. The enactment of the Act shall not have  
13 the effect of terminating, or in any way modifying, any liability, civil or criminal,  
14 which shall already be in existence on the date this Act becomes effective.

15 **Section 5. Effective Date.** This Act shall take effect upon its approval by  
16 the Governor, or its becoming law without such approval.

Prefiled: 7/11/2021

Date: 7/11/2021

Introduced by:

  
Rep. Celina R. Babauta



Reviewed for Legal Sufficiency by:

John D. Day  
House Legal Counsel