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 - 3/29/2022

STANDING COMMITTEE REPORT NO. 22-42
DATE: FEBRUARY 25, 2021
RE: H.B. 22-39

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. 22-39:

"To amend Title 6, Division 6, Chapter 5. Witnesses, by adding a new §6503. Witness to Child Outcry of Abuse, and for other purposes."

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that H. B. No. 22-39 be passed by the House in the form of House Substitute 1.

II. ANALYSIS:

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A. Purpose:

The purpose of House Bill No. 22-39 is to amend Title 6, Division 6, Chapter 5. Witnesses, by adding a new §6503. Witness to Child Outcry of Abuse, and for other purposes.

B. Committee Findings:

Your Committee finds that children that were subject to abuse often have a difficult time reporting such incidents in the same manner as adults. Such actions can cause substantial delays in reporting. In most cases, children are likely to reach out and talk to a friend, parent or teacher before any formal investigation begins. These statements are known as "outcry statements". Your Committee finds that such statements provide a significant amount of evidence of the abuse and should be given an exemption from the hearsay rules. Furthermore, pursuant to the United States Supreme Court Case Ohio v. Clark, 576 U.S. 237 (2015), the United States Supreme Court addressed the issue and found that an outcry statement of a child does not violate an accused's rights to confrontation of witness. Cognizant of such statement by the highlest level of the U.S. judicial system, your Committee finds that it is imperative to implement a law that is consistent with that statement in regards to outcry statements. Such statements possess the sensitive information that will help bring justice to those who have actually violated other human beings.

Your Committee further finds that the state of Texas has a standard that allows for outcry statements to be admissible into evidence (Article 38.072 of the Texas Code). Similar to such state, the proposed legislation aims to provide a set of requirements that must be fully satisfied in order to allow such statements to be admitted into evidence exception to the hearsay rule. It is not the intent of the Committee to allow just any statement to be admitted. However, with the requirements stated in the proposed legislation, your Committee finds that such requirements are reasonable in respecting the rights of both the accussing and accused individuals respectively. It is the intent of the proposed legislation to acquire as much evidence needed to prosecute abuse cases without infringing on the rights of the person being accussed.

It is the intent of your Committee to amend the proposed legislation to properly format the proposed statutes, as well as insert language that would reference applicable rules that we have here in the CNMI. Furthermore, it is also the intent of the Committee to remove the term "child" from the title of the proposed new statute to include individuals of all ages if they have a disability. Therefore, your Committee agrees with the intent and purpose of House Bill No. 22-39 and recommends its passage in the form of House Substitute 1.

C. Public Comments:

The Committee received comments from the following:

- Douglas W. Hartig, Public Defender, Office of the Public Defender
- Honorable Edward Manibusan, Attorney General, CNMI Office of the Attorney General
- Mr. Robert A. Guerrero, Commissioner, Department of Public Safety
- Ms. Vivian T. Sablan, Administrator, Division of Youth Services

D. Legislative History:

House Bill No. 22-39 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.

E. Cost Benefit:

The enactment of House Bill No. 22-39, HS1 will result in additional costs to the CNMI government in the form of additional staffing, training, security measures, and so forth that are needed to effectuate the intent of this Act. However, the benefits of admitting outcry statements in regards to abused individuals heavily outweigh the costs.

III. CONCLUSION:

The Committee is in accord with the intent and purpose of H. B. No. 22-39, and recommends its passage in the form of House Substitute 1.

Respectfully submitted,

Rep. Celina R. Babauta, Chairperson

Rep. Blas Jonathan "BJ" T. Attao, Vice Chair

Rep. Vicente C. Camacho, Member

Rep. Richard T. Lizama, Member

Rep. Donald M. Manglona, 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 Public Defender;
- Letter dated May 5, 2021 from the CNMI Attorney General;
- Letter dated August 10, 2021 from the Commissioner of DPS; and
- Letter dated February 22, 2022 from the Administrator of DYS.

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 n 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.[1] Most states and the Federal government are repealing mandatory minimum sentences.[2] 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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[1] 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.

[2] 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.[3] 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.[4] 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.[5]

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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[3] *Martin*, 2020 MP 10 ¶ 16.

[4] "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).

[5] "[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.[6] 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.[7] Moreover, the Commonwealth Supreme Court has the constitutional authority and duty to review final judgments from the Commonwealth Superior Court.[8] 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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[6]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."

[7]"[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.

[8] *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 farness 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."[9]

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

[9] *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[10], 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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[10] *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.[11]

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

[11] *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.[12]

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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[12] 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.[13] 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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[13] 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 (§8204). 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 of 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
Office of the Attorney General
2nd Floor Hon. Juan A. Sablan Memorial Bldg.
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Saipan, MP 96950

EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

VIA EMAIL: repcelinababauta@gmail.com

May 5, 2021

OAGHOR: 2021-038
LSR No. 21-126

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

Re: HB 22-39: "To amend Title 6, Division 6, Chapter 5. Witnesses, by adding a new §6503. Witness to Child Outcry of Abuse, and for other purposes."

Dear Chairperson Babauta:

Thank you for requesting the comments of the Office of the Attorney General on House Bill 22-39. The prosecution of cases involving child abuse present special problems for introducing the testimony of young children. This bill addresses that issue by providing for the admission of testimony from the first person who has heard an outcry of abuse by a young child.

This issue has been litigated before the United States Supreme Court. This bill is even more protective of a defendant's rights than the Supreme Court requires. Following the approach adopted in Texas, the bill requires the prosecutor to satisfy several prongs before the testimony is admissible. In addition, the child victim must be available to testify. That means the defendant will have the right to cross-examine protected as well.

For those reasons, the Office of Attorney General supports the passage of HB 22-39.

Sincerely,

EDWARD MANIBUSAN
Attorney General

cc: All Members, House of Representatives

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF PUBLIC SAFETY

Ralph DLG. Torres
Governor

Arnold I. Palacios
Lieutenant Governor

Robert A. Guerrero
Commissioner

August 10, 2021

The Honorable Celina Babauta
Chairwoman, House Standing Committee on Judiciary &
Government Operations
The House of Representatives
22nd Northern Mariana Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Ref. Comment on H.B. 22-7, H.B. 22-17, H.B. 22-35, H.B. 22-36, H.B. 22-37 & H.B. 22-39

Dear Representative Babauta:

Thank you for the opportunity to comment on H.B. 22-7 "To provide clarity relative to the crime of promoting prison contraband, otherwise known as the Contraband Reform Act of 2021; and for other purposes.", H.B. 22-17 "To amend 9 CMC § 2401 to authorize the Bureau of Motor Vehicles to regulate chauffeur licenses in the CNMI: and for other purposes.", H.B. 22-35 "To add a provision to prohibit convicted felons from possessing firearms and/or ammunitions; and for other purposes.", H.B. 22-36 "To repeal and reenact 6 CMC § 4115 to provide better clarity for the trial courts to impose sentences"., H.B. 22-37 "To amend Title 6, Division 3, Chapter 2 of the Commonwealth Code by establishing a penalty provision for criminal defendants who fail to appear in court on their scheduled date." and H.B. 22-39 "To amend Title 6, Division 6, Chapter 5 "By adding a new § 6503. Witness to Child Outcry of Abuse; and for other purposes.". The department fully supports the purpose and intent of these legislations.

Should you have any questions, please do not hesitate to let us know. Again, thank you for this opportunity to comment on this important legislation.

Sincerely,

ROBERT A. GUERRERO
Commissioner of Public Safety

Jose M. Sablan Building, Civic Center Susupe, P. O. Box 500791 Saipan, MP 96950
Telephone: (670) 664-9001 Facsimile: (670) 664-9019

DIVISION OF YOUTH SERVICES

DEPARTMENT OF COMMUNITY & CULTURAL AFFAIRS
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

OFFICE OF THE ADMINISTRATOR

1st Floor, Building 1300, P.O. Box 501000 C.K., Saipan, MP 96950

February 22, 2022

Representative Celina R. Babauta
Chairperson
Judiciary and Government Operations
House of Representatives
22nd CNMI Legislature
Saipan, MP 96950

Re: *DCCA-Division of Youth Services' Comments on HB No. 22-39*

Dear Congresswoman Celina Babauta:

The Department of Community & Cultural Affairs Division of Youth Services (DCCA-DYS) hereby submits the following:

House Bill 22-39: To amend Title 6, Division 6, Chapter 5. Witnesses, by adding a new §6503. Witness to Child Outcry of Abuse, and for other purposes.

Comment (s):

The Division of Youth Services is in support of the proposed House Bill 22-39, however, it will like to point out some areas that may need additional clarification:

1. For victims 16 years old and below, it does not mention "first person that they report to…"
2. Person with disability is defined as "17 years or older." What will happen to those victims 16 years and below with disability.
3. Since confidentiality of reporter is very protected, how will this be addressed? Under 6CMC §5325 Confidentiality of Records…states that the release of data that would identify the person who made a report of suspected child abuse or neglect or a person who cooperated in a subsequent investigation is prohibited.

If you shall have any questions or need additional information, I may also be reached at 670-237-1003/285-2553 or via email at vsablan@dys.gov.mp.

Thank you for your continued partnership with DYS' family strengthening efforts in the CNMI!

Respectfully,

Vivian T. Sablan
DYS Administrator

Cc:
DCCA Secretary
DYS-Child Protective Services Staff

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2021

First Regular Session, 2021 **H. B. 22-39, HS1**

A BILL FOR AN ACT

To amend Title 6, Division 6, Chapter 5. Witnesses, by adding a new section 6503. Witness to Outcry of Abuse; and for other purposes.

BE IT ENACTED BY THE 22ND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Findings and Purpose. The Legislature finds that children subject to abuse often have a difficult time reporting it in the same manner as adults. There are likely to be substantial delays in reporting. Moreover, children are likely to talk to a friend, teacher or parent before any formal investigation begins. Known as outcry statements, such statements provide significant evidence of the abuse and are admissible in most states as an exception to the hearsay rules. This bill sets out the standards for admission of an outcry of abuse and requires a judge to find the statement sufficiently reliable to justify its admission. The United States Supreme Court has already addressed this issue and found that admission of an outcry statement of a child does not violate an accused's right to confrontation of witnesses. See Ohio v. Clark, 576 U.S. 237 (2015). This provision will provide a

jury with critical information in evaluating the credibility of a victim of physical or sexual abuse who is a child or a person with a disability.

Section 2. Amendment. Title 6, Division 6, Chapter 5 of the Commonwealth Code is hereby amended by adding a new section 6503 to read as follows:

"§ 6503. Witness to Outcry of Abuse.

101. This section applies to a proceeding in the prosecution of an offense under any provision involving child abuse, sexual abuse of a minor, or any other offense committed against a child 16 years of age or younger or a person with a disability.

102. This section applies only to statements that:

(a) describe the alleged offense; or

(b)describe a crime, wrong, or act other than the alleged offense, if the statement is offered during the punishment phase of the proceeding; and

(1) if the crime, wrong, or act other than the alleged offense was allegedly committed by the defendant against the victim or against another child 16 years of age or younger or another person with a disability; and

(2) if the statement is otherwise admissible as evidence under Rule 404 or 405 of the CNMI Rules of Evidence or another law or rule of evidence of CNMI.

(c) were made by the child or person with a disability against whom the charged offense or other crime, wrong, or act was allegedly committed; and

(d) were made to the first person, 16 years of age or older, other than the defendant, to whom the child or person with a disability made an outcry statement about the offense or other crime, wrong, or act.

103. A party may present testimony from a witness to such an outcry statement, regardless of any hearsay rules, if:

(a) on or before 14 calendar days before the trial begins, the party intending to offer the statement:

(1) notifies the adverse party of its intention to do so;

(2) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(3) provides the adverse party with discovery of the statement; or

(b) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(c) the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

104. In this section, "person with a disability" means a person 17 years of age or older who because of age or physical or mental impairment, is substantially unable to protect the person's self from harm or to provide food, shelter, medical care, or other major life activities for the person's self."

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

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

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

Prefiled: 3/11/2021

Date: 3/11/2021 Introduced by: /s/ Rep. Celina R. Babauta
/s/ Rep. Christina M.E. Sablan

Reviewed for Legal Sufficiency by:

/s/ Joseph L.G. Taijeron, Jr.
House Legal Counsel