

ARCHDIOCESE OF AGANA  
196 B Cuesta San Ramon  
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Archbishop's Office

April 24, 2002

Dear Brother Priests and Religious:

As Many of you are aware, the U.S. Cardinals met this week with the Holy Father, Pope John Paul II, to address the problem of Sexual Abuse and related matters involving priests and religious. In his first statement, Pope John Paul II said, "Sex abuse by priests is rightly considered a crime by society", telling the Cardinals that there was no place in religious life for abusers.

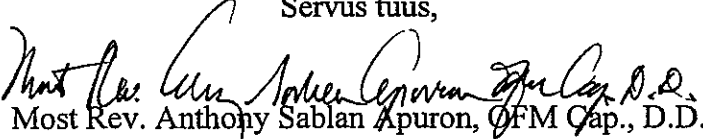
The U.S. Conference of Catholic Bishops will convene later this year and may make recommendations or adopt a national uniform policy regarding sexual abuse and other cases involving priests.

In the meantime, and in light of the recent rise in public concern and media attention to these matters, I am re-circulating the Archdiocese's Policy on Sexual Misconduct. It is strongly urged that each one of you take the time to review these and renew your commitment to the goals and procedures set forth therein.

In addition, please note that there is an Addendum to the policy relative to Guam's Child Abuse and Neglect Reporting Act. I urge any of you who are not familiar with this Act to familiarize yourselves immediately. A legal opinion of the Archdiocesan counsel is also attached for your information relative to these matters.

Please do not hesitate to contact me or the Vicar General for the Archdiocese immediately if there are any questions regarding these matters or existing policy.

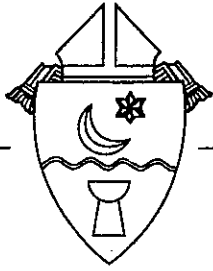
Servus tuus,

  
Most Rev. Anthony Sablan Apuron, OFM Cap., D.D.  
Metropolitan Archbishop of Agaña

Enclosures:

1. Attorney Edward S. Terlaje's letter to the Archbishop on the opinion of Guam's Child Abuse and Neglect Reporting Act (19 GCA Chapter 13).

2. **Archdiocese of Agaña Policy on Sexual Misconduct and Sexual Harassment.**
3. **Addendum to Archdiocese of Agaña Policy on Sexual Misconduct and Sexual Harassment.**
4. **Guam Code Annotated Title 6:  
Section 503: Particular Privileges.  
Section 3102: Confidential Communications.**
5. **Guam Code Annotated Title 19:  
Section 13200: Short Title; Intent and Purpose of Article.  
Section 13201: Persons Required to Report Suspected Child Abuse or Neglect.  
Section 13202: Any Persons Permitted to Report.  
Section 13203: Reporting Responsibilities.  
Section 13205: Mandatory Reporting and Post-Mortem Investigation of Deaths.  
Section 13206: Immunity From Liability.  
Section 13207: Penalty for Failure to Report.**



# THE ARCHDIOCESE OF AGAÑA

CHANCERY OFFICE

196 B Cuesta San Ramon • Agaña, Guam 96910 • Tel: (671) 472-6116 • Fax: (671) 477-3519, 472-6044

## An introduction to the Policies on Sexual Misconduct and Sexual harassment

Dear Brothers and Sisters in the Archdiocese of Agana:

The Catholic faithful have a long history of placing trust and confidence in the priests, deacons, religious and administrators whom they seek out for spiritual care. Such trust is a precondition for sharing confidences and for receiving spiritual support and guidance.

For the most part, the church's ministers have shown themselves worthy of this trust. But at times, there have been exceptions. Through sexual misconduct and sexual harassment, ministers inflict harm upon persons instead of servicing as channels of life and grace. **This is a very serious matter.** It is even more so when the victims are children or adolescents, since they are not equipped to understand the situation or to defend themselves. But adults also suffer greatly when church ministers use their position and influence to take sexual advantage of those who come to them in trust.

The Archdiocese of Agana recognizes the need to address the issues of sexual misconduct and harassment. We do so through these policies which comes to us adapted from Fr. Tony Scannell, Capuchin. The purpose of our policies is twofold: First, they are intended to prevent sexual misconduct and harassment. Second, they provide a process for dealing with such incidents when they occur.

A number of principles underlie our policies:

- the victim is not responsible for the abuse;
  - the healing of the victim should be primary concern;
  - all allegations of sexual misconduct are to be taken seriously;
  - incidents of misconduct and harassment are to be handled forthrightly, but with due regard for confidentiality and privacy;
  - the Archdiocese will cooperate with the civil authorities responsible for investigating incidents of sexual misconduct;
  - an accused priest, deacon or employee has the right to due process, both canonical and civil; and
  - as disciples of Jesus Christ, all persons involved in such incidents are to act with honesty, charity and confidence in God's power to forgive and to heal.
- We realize that our policies will be in constant need of updating as future experiences will dictate. (347)

Most Rev. Anthony Sablan Apuron, OFM Cap., D.D.  
Archbishop of Agana

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Hagatna, Guam 96932

April 23, 2002

Most Rev. Anthony Sablan Apuron, OFM CAP. DD  
Archbishop of Agana  
196 B Cuesta San Ramon  
Agana, Guam 96910

Dear Archbishop:

This letter is written pursuant to your request, relative to the applicability of Guam's Child Abuse and Neglect Reporting Act (19 GCA Chapter 13) to priests on Guam. The Guam Child Abuse and Neglect Reporting Act mandates that certain classes of professionals report suspected child abuse to Child Protective Services (CPS) or the Guam Police Department (GPD). In addition to those professions listed in subsection (b), which list does not include "priests" or "clergy", a more general class is defined in subsection (a) of Section 13201 of the law, as follows:

" (a) Any person who, in the course of his or her employment, occupation or practice of his or her profession, comes into contact with children shall report when he or she has reason to suspect on the basis of his medical, professional or other training and experience that a child is an abused or neglected child. No person may claim "privileged communications" as a basis for his or her refusal or failure to report suspected child abuse or neglect or to provide Child Protective Services or the Guam Police Department with required information. Such privileges are specifically abrogated with respect to reporting suspected child abuse or neglect or of providing information to the agency."

Our review of this law compels us to advise that all priests assigned to parishes or schools should consider themselves as members of the class of professionals that are subject to the reporting requirements. Other priests and clergy may fit the class as well. Priests should also note the law's specific abrogation of the otherwise privileged communications between priests and penitents, which abrogation has, to my knowledge, not been challenged on Guam.

While it is difficult to define exactly what constitutes "reason to suspect" pursuant to the statute, it is our opinion that verbal communication as to any potential abuse, among other things, would constitute sufficient reason. Accordingly, we would recommend that professional priests and clergy be advised of the reporting requirements of the statutes.

Most Rev. Anthony Sablan Apuron, OFM CAP. D.D.  
Page Two (2)  
April 23, 2002

Please do not hesitate to contact me regarding clarification of any questions related to the above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward S. Terlaje', written in a cursive style.

EDWARD S. TERLAJE

EST/lmc

# Policy on Sexual Misconduct

## I. Policy Statement

The Archdiocese of Agana is opposed to, will not tolerate, and will diligently strive to prevent all forms of sexual misconduct.

## II. Definitions

**Sexual Misconduct** -- as used in this document includes:

1. the intentional sexual contact between a priest or deacon and a minor, usually called **sexual abuse**;
2. the intentional sexual contact between a priest or deacon and an adult to whom the priest is providing counseling or pastoral care, usually called **sexual exploitation**;
3. all unwanted sexualized language or conduct within a work-, employment-, or ministry setting, usually called **sexual harassment**.

**Child** means any person under 18 years of age.

**Complainant** means the person who alleges that sexual misconduct has occurred. If the alleged misconduct was perpetrated toward a minor, the parent(s) of the minor shall be included unless special circumstances dictate otherwise.

**Accused Person** means a person who is alleged to have engaged in sexual misconduct. The term includes priests, deacons, and persons who are employees and/or volunteers serving in any Archdiocesan directed or controlled employment and/or ministry.

**Archbishop** means the person who holds the office of Archbishop of Agana. By virtue of his office, the Archbishop has ultimate authority over and ultimate responsibility for the implementation of the Archdiocese's sexual misconduct policy.

**Archdiocesan Investigator(s)** means person(s) authorized and directed by the Archbishop to investigate allegations of sexual misconduct.

**Complainant Support Person** means a person provided by the Archdiocese to offer spiritual care and support to the complainant, and where indicated, to his/her family. the complainant person may also serve as a liaison between the complainant and the Archdiocese.

**Clergy/Employee Support Person** means a person provided by the Archdiocese to offer spiritual care and support to a priest/deacon who is an accused person. To the extent

authorized by the accused, the clergy/employee support person may serve as a liaison between the accused and the Archdiocese.

**Review Board** means a group, usually of five persons, designated to advise and counsel the Archbishop on a matter or matters relating to sexual misconduct.

**Sexual Contact** means any intentional touching by the complainant or the accused, either directly or through clothing, by the use of any body part or object, of the complainant's or the accused's intimate parts if that intentional touching is either for the purpose of sexually humiliating the complainant or of sexually arousing or gratifying either the complainant or the accused. As used in this definition **intimate parts** means the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being.

**Sexual Abuse Response Coordinator (SARC)** means a priest/deacon/person appointed by the Archbishop to coordinate the Archdiocese's response to allegations of sexual misconduct.

### **III. Prevention of Sexual Misconduct**

The Archdiocese of Agana will strive to prevent the occurrence of sexual misconduct. In particular:

- A. all clergy and employees will be given a copy of the Sexual Misconduct Policy;
- B. from time to time clergy and employees will be required to attend educational programs about sexual misconduct; and
- C. the selection of candidates for the Archdiocese, as well as of employees and volunteers, will include background checks and other standard means of assessing one's potential for sexual misconduct.

### **IV. Response to Allegations of Sexual Misconduct**

#### **A. Reporting**

1. As soon as any priest, deacons, employee or volunteer of the Archdiocese learns about suspected sexual misconduct, he or she shall report the information to the Archbishop and if required by the laws of the territory, to the appropriate civil authorities. (The requirement to report to civil authorities does not apply in those instances in which church law or civil law mandates that the individual keep the information confidential, such as in instances of sacramental confession, or of legally privileged communications, or other legal duty of confidentiality, binding the person who learns of the information, e.g., a professional health care provider, spiritual advisor, etc.)
2. The Archbishop will promptly:
  - a. verify that any report required by law has been made;

- b. notify the sexual abuse response coordinator;
- c. direct an Archdiocesan Investigator to do a complete investigation, if indicated by the circumstances; and
- d. direct the accused person to have no contact with confidential complainant or the complainant's family.

3. If in his judgment he deems it appropriate, the Archbishop may report the alleged misconduct to confidential administrator of the ministry site where the accused person resides. He may also report to civil authorities even if the reporting is not required by territorial law.

4. At any time after an allegation is reported to the Archbishop -- in his sole discretion and without any implication of guilt or of having judged the merits of the allegation -- the Archbishop may place an accused person on administrative leave.

5. Any media contact or inquiries regarding an incident of sexual misconduct must be directed to the Archbishop.

### **B. Investigation**

1. Upon being appointed, an Archdiocesan Investigator shall promptly conduct an investigation of the facts regarding the allegations of the factual circumstances. The investigator shall take care not to interfere with any investigation by civil authorities. (If the complainant is represented by counsel, communications shall be between the complainant's counsel and counsel for the Archdiocese.

- a. Whenever possible -- but only after advising the complainant that any recorded statement is totally voluntary on his or her part -- the investigator will obtain (in writing or by other means) a recorded statement from the complainant, from the parent(s) of a minor complainant when indicated, and from any potential witnesses.

- b. The investigator shall make a written report to the Archbishop of the information obtained, and shall include with the report copies of all recorded statements the.

2. Upon learning of any allegation of sexual misconduct the SARC will promptly notify the complainant (and the parents) of a minor complainant):

- a. that the Archdiocese is directing an investigator to investigate the facts and to take statements from persons who may have information, and that they are free to give or not give information and/or recorded statement;

- b. that they are free to consult and attorney of their choice at their expense; and

- c. that the Archdiocese will make a complainant support person available to them.

3. If the accused person is a priest/deacon:

- a. the Archbishop or his designee will notify the accused:

- 1) of the substance of the allegations;

- 2) that a priest/deacon support person will be made available to him;
- 3) that he has a right to legal counsel, both civil and canonical; and
- 4) that he is requested, but not required, to respond to the allegations either in person, or through his priest/deacon support person, or through counsel of his choice.

b. If the accused priest/deacon admits sexual misconduct:

1) he shall be placed immediately on administrative leave, if he is still active in the ministry in which the misconduct occurred;

2) the matter of misconduct will then be turned over to the Archbishop who, after obtaining all needed and appropriate assessments, consultations and advice regarding the matter, will determine its appropriate disposition.

c. If an accused priest/deacon chooses not to respond, or if he denies the charges, the matter shall be submitted to a review board in all cases, except when the investigation shows to the satisfaction of the Archbishop that no reasonable cause exists to believe that sexual misconduct occurred.

4. If the accused persons is not a priest/deacon, the Archbishop and/or his designee is free to take any an all appropriate actions with confidential accused person's contractual and common law rights. Such actions may include the immediate suspension or termination of the employee or volunteer. Nothing in this document shall be construed as to give any accused person any rights which he or she does not otherwise possess, nor shall this document be construed as a waiver by the Archdiocese of its rights to be free from governmental involvement in religious and/or ecclesiastical matters.

### **C. Review Board**

1. If criminal proceedings are pending, or if civil proceedings either appear likely, are threatened or are pending, the Archbishop, after obtaining advice of counsel, shall determine the time for submitting the matter to a review board. In setting a time the Archbishop shall attempt to set a time which will not jeopardize the legal rights or obligations of anyone.

2. A review board will be convened to help determine whether reasonable cause exists to believe that an accused priest/deacon has engaged in sexual misconduct. The board will consider all relevant evidence gathered through the investigation and all other relevant evidence, including evidence provided by or on behalf of the accused. Thereafter the review board will make its findings and/or recommendations to the Archbishop. Upon receipt of the board's finding and/or recommendations, the Archbishop will determine whether reasonable evidence supports the truth of the allegations of sexual misconduct.

3. If the Archbishop makes a determination that evidence supports a reasonable belief that sexual misconduct has occurred:

a. the Archbishop shall immediately place the priest/deacon on administrative leave, if the priest/deacon has not already been placed on administrative leave;

b. the Archbishop may take such actions which he in his discretion deems warranted by the circumstances, including without limitation, appropriate professional testing, evaluation and/or assessment of the accused, all of which actions can be directed by the Archbishop and consented to by the accused without any implication of guilt and without prejudice to the accused priest/deacon's presumption of innocence.

4. If there has been a finding that the evidence does not support the allegation of any sexual misconduct, the Archbishop shall take whatever actions he deems appropriate to clear the name of the accused priest/deacon. The SARC will also suggest resources to help a wrongfully accused priest/deacon to deal with the emotional effects of being wrongfully accused.

#### **D. Appeal from Findings**

If either the complainant, the parent(s) of a minor complainant, or the accused priest/deacon dispute the Archbishop's determination regarding the presence or absence of evidence reasonably supporting the truth of the allegations of sexual misconduct, a review board (different from the one which heard the matter) will be convened for the purpose of reviewing all of the evidence and making findings and recommendations to the Archbishop. After considering the findings of this review board the Archbishop will make the final decision on the matter.

#### **E. Disposition**

1. Regarding an accused priest/deacon:

a. Whenever the Archbishop has determined that the evidence reasonably supports a belief that sexual misconduct has occurred, the Archbishop shall take such further actions as in his judgment are deemed appropriate, such as: placing the priest/deacon on indefinite leave; directing the accused to participate in an evaluation and/or therapeutic treatment; placing restrictions on the priest/deacon's ministry and/or activities; seeking and/or imposing appropriate canonical measures or penalties. To assist in determining an appropriate disposition the Archbishop may seek the advice of the review board.

b. Whenever the Archbishop is satisfied that no sexual misconduct has occurred, the accused priest/deacon may be returned to any ministry otherwise appropriate for the priest/deacon.

2. Regarding one who is not a priest/deacon:

The decision on whether an accused person who is not a priest/deacon will be allowed to return to further employment or ministry will be in the sole discretion of the Archbishop as to what is in the best interest of the ministry, of the spiritual well-being of the people served by it, and of the religious and ecclesiastical well-being of the

Archdiocese, subject only to contractual or other legally enforceable rights, if any, of the accused person.

#### F. Aftercare

1. In addition to being committed to protecting persons from the harm of sexual misconduct, the Archdiocese is also committed to the rehabilitation of any priest/deacon who has been involved in sexual misconduct, and to provide such supervision of such priest/deacon as is reasonably required by all of the circumstances:

a. As a rule, the person holding supervisory, administrative position over the priest/deacon shall be given appropriate and needed information relating to the priest/deacon.

b. The Archdiocese will work closely with therapists and others who participate in the priest/deacon's treatment and/or rehabilitation.

c. The SARC will have authority to monitor and supervise the aftercare of any priest/deacon who has been the subject of action by the Archbishop for sexual misconduct and to take appropriate actions but not limited to the following:

1) monitoring and periodically assessing whether a priest/deacon is fulfilling the terms of any aftercare contract, conditions or restrictions on his activities or ministry; and if the Archbishop has directed the priest/deacon to comply with the recommendations of professionals, the SARC will monitor the priest/deacon's compliance with those recommendations;

2) periodically assessing the priest/deacon's progress and, as appropriate, recommending to the Archbishop modifications (including elimination) of conditions and restrictions on his ministry and/or activities; and

~~3) arranging for, providing and periodically assessing person(s) for on-site support and supervision of a priest/deacon subject to aftercare.~~

2. Within the discretion of the Archbishop, the Archdiocese will help pay for reasonable and necessary counseling and therapeutic services for one who has been subjected to sexual misconduct by a priest/deacon.

#### IV. Construction of these Policies

These policies have been adopted to provide comprehensive and effective means of handling matters and allegations of sexual misconduct and shall be construed so as to effectuate that purpose so that the Archdiocese may fulfill its ecclesiastical mission.

(2216)

## **Policy on Sexual Harassment**

Catholic tenets and mission provide the basis for all our endeavors. Specifically, in all ministries of the Archdiocese and in all workplaces within our ministries, Catholic tenets and mission will provide the criteria for decision making. In fulfilling our mission, each Archdiocesan ministry shall be diligent to comply with all federal and local laws to which the ministry may be subjected. Constant diligence shall be exercised against all forms of immoral and/or illegal discrimination or harassment.

In accord with the Sexual Misconduct Policy of the Archdiocese of Agana, sexual harassment of any kind will not be tolerated. Sexual harassment involves sexually-oriented behavior (speech, deeds, posting of notes, etc.) which is perceived as offensive. Sexual harassment includes any **continuing pattern or single, significant occurrence of unwelcome sexual advances, or requests for sexual favors, or physical contact of a sexual nature.**

### **Complaint Procedure**

**Persons (including priests/deacons) who feel that they are being sexually harassed should:**

1. Clearly tell the harasser that his/her conduct is unacceptable. The person should also make a formal complaint in writing. (A form for filing a complaint is included with this policy). Such a written complaint **must** be made whenever the harassment is done by the person's supervisor or the unwanted behavior continues after the harasser has been told that this is unacceptable. The written complaint may be given to any administrator with whom the person feels comfortable, including the Archbishop or his delegate.
2. The administrator will promptly conduct an impartial investigation of the complaint. this will include personal interviews with the alleged victim, the alleged perpetrator, and any possible witnesses. The administrator will then make known his/her findings and recommendations in writing to the Archbishop or his delegate.
3. The Archbishop or delegate has the final authority to resolve the complaint. Any person, priest/deacon or administrator who, after investigation, has been found to have sexually harassed another will be subject to the full range of disciplinary options, including immediate termination.

### **Nonretaliation**

The Archdiocese of Agana not only prohibits sexual harassment but also strictly prohibits any retaliation against any person who, in good faith, has registered a complaint under this procedure. Any person or priest, deacon, or administrator who, after investigation, has been found to have retaliated against another person, priest, deacon, or administrator

for utilizing the complaint procedure in this policy will be subject to the full disciplinary options, including immediate termination.

**Archdiocese of Agana**

**Confidential  
Complaint Regarding Harassment**

Si Yu'os ma'ase' (thank you) for bringing your concern to our attention. We will try to resolve promptly your complaint. Experience suggests that first discussing your concern with your supervisor often meets with mutual success but, if the supervisor has engaged in or condoned the harassment or discrimination, you are not required to discuss your concern with the supervisor.

Have you held such a discussion? No \_\_\_\_\_ Yes \_\_\_\_\_ Date: \_\_\_\_\_

If there has been no such meeting, what was your reason for not bringing it to your supervisor's attention (attach additional sheets, if necessary)

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If you did discuss this matter with your supervisor, please state the supervisor's response (attach additional sheets if necessary)?

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**COMPLAINT**

I. Please state the facts, events and circumstances that initiated the filing of this complaint. Within the statement, please give the names of the persons engaging in the alleged discrimination or harassment, your response, and identify all witnesses to the alleged discrimination or harassment (attach additional sheets, if necessary).

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II. Please indicate what action or change you are seeking to resolve this complaint (attach additional sheets, if necessary).

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Signature \_\_\_\_\_

Today's date: \_\_\_\_\_

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**For Archdiocese Use Only**

Date received: \_\_\_\_\_

Date closed: \_\_\_\_\_

Disposition: (242)

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**Addendum to Archdiocese of Agana - Policy on  
Sexual Misconduct and Sexual Harassment**

The following is hereby adopted effective April 23, 2002, as an Addendum to the  
Archdiocese of Agana Policy on Sexual Misconduct and Sexual Harassment:

The Guam Child Abuse and Neglect Reporting Act (19 GCA Chapter 31)  
and all other laws of Guam shall be strictly adhered to in all instances of suspected  
sexual misconduct. For purposes of this statute, priests assigned to schools or  
parishes should presume themselves as subject to the reporting requirements of that  
law unless otherwise advised by the Archbishop after consultation with an  
attorney. All others shall request a determination by the Archbishop as to the  
applicability of the law under the circumstances.

Citation/Title  
GU ST T. 6, Sec. 503, Particular Privileges.

**\*3341 6 G.C.A. § 503**

**GUAM CODE ANNOTATED  
TITLE 6. GUAM RULES OF EVIDENCE.  
DIVISION 1. GUAM RULES OF EVIDENCE  
ARTICLE 5. PRIVILEGES**

*Current through P.L. 26-05 (2001)*

**§ 503. Particular Privileges.**

Except as otherwise required by the Organic Act of Guam or provided by Act of the Guam Legislature, the privileges of a witness, person, government, State, or political subdivision thereof shall include:

- (a) the privilege of a Defendant in a criminal case not to be called as a witness and not to testify
- (b) the privilege against self-incrimination
- (c) the attorney-client privilege
- (d) the privilege not to testify against one's spouse
- (e) the privilege for confidential marital communication
- (f) the physician-patient privilege
- (g) the psychotherapist-patient privilege
- (h) the clergyman-penitent privileges.

*SOURCE: Guam Law and Practice.*

<General Materials (GM) - References, Annotations, or Tables>

**NOTES, REFERENCES, AND ANNOTATIONS**

CROSS-REFERENCES: 8 GCA § 1.11--Rights of Defendant Enumerated.

COMMENT: The Federal Rules of Evidence do not establish particular privileges, leaving it to the determination of the courts. Guam has seen fit to set forth the particular privileges it recognizes.

Citation/Title  
 GU ST T. 6, Sec. 3102, Confidential Communications.

**\*3438 6 G.C.A. § 3102**

**GUAM CODE ANNOTATED  
 TITLE 6. GUAM RULES OF EVIDENCE.  
 DIVISION 2. PRINCIPLES OF EVIDENCE  
 CHAPTER 3. WITNESSES  
 ARTICLE 1. WITNESSES GENERALLY**

*Current through P.L. 26-05 (2001)*

**§ 3102. Confidential Communications.**

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness as to matters which are privileged. The general classes of privilege are stated in 503 of Division 1 of this Title. This Section provides the principles underlying the privileges stated in 503 of this Title:

1. A husband cannot be examined for or against his wife without his consent, nor a wife for or against her husband without her consent; nor can either during the marriage or afterward, without the witness's consent, be examined as to any communication made by one to the other during the marriage.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment, nor can any attorney's secretary, stenographer or clerk be examined without the consent of the employer, concerning any fact the knowledge of which has been acquired in such capacity.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient, provided, however, that either before or after probate, upon the contest of any will executed, or claimed to have been executed, by such patient or after the death of such patient, in any action involving the validity of any instrument executed or claimed to have been executed, by him, conveying or transferring any real or personal property, such physician or surgeon may testify to the mental condition of said patient and in so testifying may disclose information acquired by him concerning said deceased which is necessary to enable him to prescribe or act for such deceased; provided, further, that after the death of the patient, the executor of his will or the administrator of his estate, or the surviving spouse of the deceased or, if there be no surviving spouse, the children of the deceased personally, or if minors by their guardian, may give their consent, in any action or proceeding brought to recover damages on account of the death of the patient; provided, further, that where any person brings an action to recover damages for personal injuries, such action shall be deemed to constitute a consent by the person bringing such action that any physician or surgeon who has prescribed for or treated said person and whose testimony is material in said action shall testify; and provided, further, that the bringing of an action to recover for the death of a patient, by the executor of his will, or by the administrator of his estate, or by the surviving spouse of the deceased, or if there be no surviving spouse by the children personally or, if minors, by their guardian(s), shall be deemed consent to the testimony of any physician or surgeon who attended said deceased.

\*3439 5. A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by its disclosure. Any determination of whether or not such communications should be, in fact, disclosed, shall be

GU ST T. 6, Sec. 3102, Confidential Communications.

made by the court or judge thereof hearing the case, sitting in camera. No matter sought to be disclosed may be ordered by the court to be disclosed until a period of five (5) days has elapsed, during which the interested parties may appeal. If an appeal is timely taken, no disclosure may be ordered until the appeal is disposed with in favor of the party seeking disclosure.

*SOURCE: CCP § 1881, modified.*

<General Materials (GM) - References, Annotations, or Tables>

#### NOTES, REFERENCES, AND ANNOTATIONS

**COURT DECISIONS:** See *People v. Santos*, Superior Court Cr. #86F-79 (8/20/80) in which the Court interpreted § 503 of Div. 1 in accordance with the latest Federal interpretation of the marital privilege. This Section has been changed to reflect both § 503 and the Santos case.

**COMMENT:** 1. Subsection 1 has been materially changed from the rule at Common Law. At Common Law the non-witness spouse shared the privilege so that he or she could forbid the testimony of the witness-spouse in privileged areas. This Subsection and 503, and the U.S. Supreme Court have all decided that the privilege should be reduced to that of the witness-spouse only. Thus, if the witness-spouse desires to testify about marital affairs, he or she may without obtaining the consent of the other spouse. The courts now believe that if one spouse is willing to testify against the other, the marriage is in such a bad shape that it is beyond the protection of the privilege.

2. Section 504 of Div. 1 states that claims of privilege are to be governed by the principles of the common law as they may be interpreted by the Superior Court of Guam in light of reason and experience." Therefore, the Commission is continuing the definition of privileges as contained in prior law, modified only where needed to conform with Division 1 and with clarity.

3. CCP § 1881 contains the first sentence of Subparagraph 5 of this Section dealing with government privilege. The Attorney General has suggested that at least procedures be stated to guide the court in determining when to use the privilege. Therefore, the remainder of the Subparagraph is added to provide for in camera hearings and no disclosure until after appeals have ended. To provide otherwise would be to moot the possibility of appeal. However, no further guidelines are added to restrict the privilege since this language has existed in the Code from its Guam beginnings with no detriment to the public welfare.

4. No definition of psychotherapist-patient privilege is added here. California law contains a multitude of definitions and more exceptions. Considering the state of the art on Guam, the Commission thought it wise to leave the definition of this privilege up to the court "in light of reason and experience," and that not just from California.

Citation/Title

GU ST T. 19, Sec. 13200, Short Title; Intent and Purpose of Article.

\*14282 19 G.C.A. § 13200

**GUAM CODE ANNOTATED  
TITLE 19. PERSONAL RELATIONS.  
DIVISION 1. PERSONS AND PERSONAL RELATIONS  
CHAPTER 13. CHILD PROTECTIVE ACT  
ARTICLE 2. CHILD ABUSE AND NEGLECT REPORTING ACT.**

*Current through P.L. 26-05 (2001)*

**§ 13200. Short Title; Intent and Purpose of Article.**

(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse. In any investigation of suspected child abuse, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

<General Materials (GM) - References, Annotations, or Tables>

Citation/Title

GU ST T. 19, Sec. 13201, Persons Required to Report Suspected Child Abuse or Neglect.

\*14283 19 G.C.A. § 13201

**GUAM CODE ANNOTATED  
TITLE 19. PERSONAL RELATIONS.  
DIVISION 1. PERSONS AND PERSONAL RELATIONS  
CHAPTER 13. CHILD PROTECTIVE ACT  
ARTICLE 2. CHILD ABUSE AND NEGLECT REPORTING ACT.**

*Current through P.L. 26-05 (2001)*

**§ 13201. Persons Required to Report Suspected Child Abuse or Neglect.**

(a) Any person who, in the course of his or her employment, occupation or practice of his or her profession, comes into contact with children shall report when he or she has reason to suspect on the basis of his medical, professional or other training and experience that a child is an abused or neglected child. No person may claim "privileged communications" as a basis for his or her refusal or failure to report suspected child abuse or neglect or to provide Child Protective Services or the Guam Police Department with required information. Such privileges are specifically abrogated with respect to reporting suspected child abuse or neglect or of providing information to the agency.

(b) Persons required to report suspected child abuse under subsection (a) include but are not limited to any licensed physician, medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, Christian Science practitioner, school administrator, school teacher, school nurses, school counselor, social services worker, day care center worker or any other child care or foster care worker, mental health professional, peace officer or law enforcement official.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 18 engaged in an act of sexual conduct shall report such instances of suspected child abuse to Child Protective Services immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 48 hours of receiving the information concerning the incident. As used in this section, sexual conduct means any of the following:

- (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
- \*14284 (2) Penetration of the vagina or rectum by any object;
- (3) Masturbation, for the purpose of sexual stimulation or the viewer;
- (4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer; or
- (5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation to the viewer.

<General Materials (GM) - References, Annotations, or Tables>

Citation/Title

GU ST T. 19, Sec. 13202, Any Person Permitted to Report.

**\*14285 19 G.C.A. § 13202**

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*Current through P.L. 26-05 (2001).*

**§ 13202. Any Person Permitted to Report.**

In addition to those persons and officials required to report suspected child abuse or neglect, any person may make such report if that person has reasonable cause to suspect that a child is an abused or neglected child.

<General Materials (GM) - References, Annotations, or Tables>

Citation/Title

GU ST T. 19, Sec. 13203, Reporting Responsibilities.

\*14286 19 G.C.A. § 13203

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*Current through P.L. 26-05 (2001)*

**§ 13203. Reporting Responsibilities.**

(a) Reporting procedures. Reports suspected child abuse or neglect from persons required to report under § 13201 shall be made immediately by telephone and followed up in writing within 48 hours after the oral report. Oral reports shall be made to Child Protective Services or to the Guam Police Department.

(b) Cross reporting among agencies.

(1) Child Protective Services shall immediately or as soon as practically possible report by telephone to the Guam Police Department and to the Attorney General's Office every known or suspected instance of child abuse as defined in § 13101, except acts or omissions coming within subsection (t) (4) of § 13101. Child Protective Services shall also send a written report thereof within 48 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subsection.

(2) The Guam Police Department shall immediately or as soon as practically possible report by telephone Child Protective Services and to the Attorney General's Office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subsection (t) (4) of § 13101, which shall only be reported to Child Protective Services. However, the Guam Police Department shall report to Child Protective Services every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of inaction of a person responsible for the child's welfare to adequately protect the minor from abuse when such person knew or reasonably should have known that the minor was in danger of abuse. The Guam Police Department shall also send a written report thereof within 48 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subsection.

(3) Child Protective Services and the Guam Police Department shall immediately, or as soon as practically possible, report by telephone to the appropriate Department of Defense Family Advocacy Program every known or suspected instance of child abuse reported to them when such report involves active duty military personnel or their dependents.

\*14287 (c) Contents of report. Reports of child abuse or neglect should contain the following information:

(1) Every report of a known or suspected instance of child abuse should include the name of the person making the report, the name, age and sex of the child, the present location of the child, the nature and extent of injury, and any other information, including information that led that person to suspect child abuse, that may be requested by the child protective agency receiving the report. Persons who report pursuant to § 13202 shall be required to reveal their names;

(2) Other information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse;

(3) The name of the person or persons responsible for causing the suspected abuse or neglect;

(4) Family composition;

GU ST T. 19, Sec. 13203, Reporting Responsibilities.

(5) The actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the child or notification of the medical examiner; and

(6) Any other information which the child protective agency may, by regulation, require.

(d) Identity of person reporting. The identity of all persons who report under this Article shall be confidential and disclosed only among child protective agencies, to counsel representing a child protective agency, to the Attorney General's Office in a criminal prosecution or Family Court action, to a licensing agency when abuse in licensed out-of-home care is reasonably suspected, when those persons who report waive confidentiality, or by court order.

(e) Reporting forms. The reporting forms developed pursuant to § 13204 shall be made available to all persons required to report under § 13201.

<General Materials (GM) - References, Annotations, or Tables>

Citation/Title

GU ST T. 19, Sec. 13205, Mandatory Reporting and Post-Mortem Investigation of Deaths.

\*14289 19 G.C.A. § 13205

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*Current through P.L. 26-05 (2001)*

**§ 13205. Mandatory Reporting and Post-Mortem Investigation of Deaths.**

Any person or official required to report suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report that fact to the chief medical examiner. The chief medical examiner shall accept the report for investigation and shall report his or her findings to the Guam Police Department, the Attorney General's Office, Child Protective Services and, if the report is made by hospital personnel to the hospital.

<General Materials (GM) - References, Annotations, or Tables>

Citation/Title

GU ST T. 19, Sec. 13206, Immunity From Liability.

\*14290 19 G.C.A. § 13206

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**§ 13206. Immunity From Liability.**

Any person, hospital, institution, school, facility or agency participating in good faith in the making of a report or testifying in any proceeding arising out of an instance of suspected child abuse or neglect, the taking of photographs or the removal or keeping of a child pursuant to § 13302 of the Child Protective Act shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse or neglect pursuant to § 13201 shall be presumed.

<General Materials (GM) - References, Annotations, or Tables>

Citation/Title

GU ST T. 19, Sec. 13207, Penalty for Failure to Report.

\*14291 19 G.C.A. § 13207

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**§ 13207. Penalty for Failure to Report.**

Any person required to report pursuant to § 13201 who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist is guilty of a misdemeanor and is punishable by confinement for a term not to exceed six months, by a fine of not more than \$1,000 or by both. A second or subsequent conviction shall be a felony in the third degree. Fines imposed for violations of this Chapter shall be deposited in the Victims Compensation Fund.

<General Materials (GM) - References, Annotations, or Tables>