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CH. 78 GUAM COMMUNITY POLICE REVIEW COMMISSION

CHAPTER 78
GUAM COMMUNITY POLICE REVIEW COMMISSION

SOURCE: This entire Chapter was enacted by P.L. 25-46:4 (June 15, 1999) and “re-established” by P.L. 30-076:2 (Jan. 22, 2010).

2010 NOTE: In re-establishing this Chapter 78, P.L. 30-076:1 notes that the “Guam Community Police Review Commission was abolished pursuant to P.L. 26-76:56 (Mar. 12, 2002) for failing to meet in over twelve (12) months.”

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§ 78101. Title.

This Chapter shall be known and cited as the *Community Partnership for Police Accountability Law of 1999*.

§ 78102. Definitions.

Unless the context otherwise requires, the definitions set forth herein and in Chapter 77 of this Title shall govern the construction and interpretation of this Chapter.

(a) *Employee* means an officer or employee of the Guam Police Department, including the Chief of Police, the Deputy Chief of Police and the Police Commander.

(b) *Hearing* means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by an investigating committee for the purpose of taking or adducing testimony or receiving other evidence. A hearing may be open to the public or closed to the public in accordance with all applicable laws of Guam.

§ 78103. Community Police Review Commission Established.

(a) There is hereby created a Guam Community Police Review Commission ('Commission') for the purpose of receiving and investigating allegations of misconduct on the part of an employee or employees and making findings of fact and conclusions based upon those findings of fact. The Commission shall consist of seven (7) members, all of whom shall be citizens of the United States and have resided on Guam for at least five (5) consecutive years preceding his or her appointment, and shall be appointed as follows:

(1) three (3) members by *I Maga'lahaen Guåhan*;

(2) two (2) members by the Speaker of *I Liheslaturan Guåhan*;

(3) one (1) member by the Mayors Council;

(4) one (1) member by the President of the Guam Bar Association, who shall be an active member of the Association.

(5) Appointment Documents. The Guam Police Department shall be responsible for the receipt and retention of any and all appointment documents of the members of the Commission, and shall notify *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan*, where

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applicable, of such appointments and expiration of terms *no later than* fifteen (15) days following the receipt or acknowledgement of such timelines.

(b) Members of the Commission shall serve for a period of three (3) years each, *except* that any member appointed to fill a vacancy prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. The members shall serve for terms of three (3) years, *except* that in the year in which the law is enacted, of the three (3) members appointed by *I Maga'lahaen Guåhan, I Maga'lahaen Guåhan* shall appoint one (1) member for one (1) year; one (1) member for two (2) years; and one (1) member for three (3) years. No member shall serve more than two (2) consecutive terms or portions thereof.

(c) A member may be re-appointed to succeed himself, but not for more than two (2) consecutive terms, and not for more than six (6) years.

(d) The Commission shall elect one (1) of its members as Chairperson, one (1) as Vice-Chairperson, and one (1) as Secretary, who shall each hold office for one (1) year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. Officers shall be elected no later than the second meeting of the Commission following its appointment. All members shall continue to serve until their successors have been appointed.

(1) Appointment of an Interim Chairperson to the Commission. *I Maga'lahaen Guåhan shall* appoint an interim chairperson from among his/her appointments to conduct the initial meeting for the Commission, and *shall* serve until such time that the Commission members, in accordance with the provisions of this Chapter, selects its Chairperson and other leadership.

(e) No member of the Commission shall be an elected official or an unclassified employee of the government of Guam.

(f) No person, who has been previously convicted of a felony shall be appointed to the Commission.

SOURCE: Subsection (a)(5) added by P.L. 31-033:2 (Apr. 18, 2011). Subsection (d)(1) added P.L. 31-033:3 (Apr. 18, 2011).

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§ 78103.1. Administrative Support for the Commission.

The Guam Police Department, through the Chief of Police, is hereby designated to provide the necessary administrative and clerical support, to include a meeting place, to the Commission, and *shall* ensure that the administrative provisions contained in this Chapter are properly adhered to. The Chairperson of the Commission, in cooperation with the Chief of Police, may request for budgetary support from *I Liheslaturan Guåhan* in the Guam Police Department's annual budget submission, which *shall* be so identified.

SOURCE: Added by P.L. 31-033:4 (Apr. 18, 2011).

§ 78104. Vacancy.

Vacancies in the membership of the Commission shall *not* affect the authority of the remaining members to execute the functions of the Commission, and shall be filled in the same manner and by the same appointing authority as the original appointment, and such person shall serve for the unexpired term of the vacancy. The appointment of any member of the Commission who has been absent and not excused from three (3) consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission. Vacancies occurring in the Commission shall be filled within thirty (30) days.

§ 78105. Quorum.

A majority of the members of the Commission *shall* constitute a quorum for the transaction of business, and the concurrence of a majority of the members *shall* be necessary to make any action of the Commission valid. No action *shall* be taken by the Commission at any meetings or hearings, *unless* a quorum is present.

SOURCE: Amended by P.L. 30-076:3 (Jan. 22, 2010).

§ 78106. Meetings.

The Commission *shall* meet once every month at a regularly scheduled time and place for the purpose of conducting evidentiary hearings and/or to conduct any other business necessary to the operation of the Commission. Regular meetings may be held in any building in which the Department is located, including, but *not* limited to, Police Precincts. Special meetings may be called by the Chairperson or by three (3) members of the

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Commission at such additional times and places as deemed necessary. At least once every three (3) months, or as it determines, the Commission may meet in any other places and locations throughout Guam for the purposes of encouraging interest, and facilitating attendance by people of the various municipalities in Guam at the meetings.

All meetings *shall* be open to the public, *unless* the Commission, in order to protect the rights and privacy of individuals in accordance with all applicable laws, decides otherwise, and if such closed meeting is *not* waived by the individual concerned. The Commission *shall* cause to be kept proper records of its proceedings. The records and files of the Commission and its officers *shall* include, but *not* be limited to, all official correspondence, or copies thereof, to and from the Commission and its members, gathered in their official capacities, and *shall* be kept and open for inspection by the public at reasonable times in a location to be determined by the Commission.

SOURCE: Amended by P.L. 31-116:2 (Sept. 30, 2011).

§ 78107. Compensation.

Each member of the Commission shall be compensated in the same manner as are other members of boards and commissions, and shall be reimbursed for expenses incurred in the performance of duties in the same manner and amount as other boards and commission members.

§ 78108. Authority and Duties.

The Commission shall have the following authority and duties:

(a) to receive complaints of the following alleged misconduct and actions directed against the Department and any of its employees and to fully and completely investigate said complaints:

- (1) use of excessive or deadly force;
- (2) injuries to, or death of, a person while under the custody of the Guam Police Department;
- (3) discrimination in the provision of police services, or other discriminatory conduct, on the basis of sex, race, color, ethnicity, creed, religion, national origin, sex, sexual preference, disability or age and other violations of civil rights;
- (4) theft;

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(5) any other crime or misconduct which constitutes a felony or felonies under the laws applicable to Guam; *and*

(6) any other crime or misconduct involving *more than* one (1) employee.

(b) to make such guidelines and recommendations, including disciplinary actions for those employees found to be in violation of any laws or standards of conduct or guilty of a misconduct, and give such advice without limitation, including disciplinary and other action relating to departmental policies and procedures, as the Commission in its discretion deems advisable;

(c) to ensure that investigation of all complaints filed with the Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible in an impartial manner; that regular annual reports relating to the number, kind and status of all such complaints shall be made by the Commission to the Chief of Police and to *I Liheslaturan Guåhan*;

(d) to review all cases reported to the Department under § 77133 of this Title, and to conduct further independent investigation as it determines in accordance with the rules and regulations adopted and promulgated as authorized in this Chapter;

(e) review all records and other information submitted to it from any source and initiate its own independent investigation or enter into a contract for services with an Independent Special Attorney and/or an Independent Special Investigator who shall be a civilian ('*Civilian*' for the purpose of this Section, is a person who is *not* now, and has *not* been, a sworn officer or an employee of the Department within the last five (5) years of the contract of services as an Independent Special Attorney or an Independent Special Investigator, and shall *not* have been an employee of the Department of Law within the last two (2) years of the contract of services as an Independent Special Attorney or an Independent Special Investigator. An Independent Special Attorney shall be an active member of the Guam Bar Association. An Independent Special Investigator shall have prior experience or training as an investigator.);

(f) adopt and promulgate rules and regulations, pursuant to the Administrative Adjudication Law, and subject to legislative approval,

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governing its operations, including the duties of its officers, the filing of complaints, conduct of hearings and procedures for its own activities and investigations, and a process for determining which cases it will review (The Commission shall consult with the Chief of Police in developing these rules.);

(g) to recommend procedures, programs and legislation to the Department and to *I Liheslaturan Guåhan*, to:

(1) advance and improve the relations between the Department and the community;

(2) enhance cooperation by the community;

(3) increase public trust and confidence in the Department;
and

(4) encourage and ensure equal protection all citizens under the laws of Guam; *and*

(h) to advise, consult and cooperate with other agencies of the government of Guam; the Federal Government and interested persons or groups.

Nothing herein shall prohibit the Chief of Police or the Police Commander from investigating the conduct of an employee under his or her command, or taking disciplinary or corrective action, otherwise permitted by Chapter 77 of this Title, when such is warranted; and nothing herein shall limit or otherwise restrict the disciplinary powers vested in the Chief of Police by Chapter 77 of this Title.

SOURCE: Subsection (a) amended by P.L. 30-076:4 (Jan. 22, 2010).

§ 78109. Finance and Staff.

Subject to budget limitations, the Commission is authorized to, and may, contract or employ, for the duration of the investigation, an Independent Special Attorney and/or an Independent Special Investigator or other personnel as necessary for the proper performance of its duties and to carry out the purposes of this Chapter, to the extent of funds made available to it for such purpose. *I Liheslaturan Guåhan* shall appropriate to the Commission, from time to time, funds as are necessary to implement the provisions of this Chapter.

§ 78110. Complaint Filing.

(a) In addition to the reporting and other terms for police officer violations enumerated in § 77133 of this Title, any person may file complaints of alleged crime or misconduct with the Commission as listed under Subsection (a) of § 78108, by submitting said complaints at locations and in a manner to be determined by the Commission. The Commission shall select at least one (1) location for the receipt of complaints that is *not* affiliated with the Department, nor staffed by employees of the Department.

(b) The Commission shall within thirty-five (35) working days of receipt of the complaint described in Subsection (a) of this Section, prepare a statement open to the public indicating the preliminary disposition of the allegation.

§ 78111. Preliminary Review.

Within five (5) working days of the date that a complaint was filed, the Commission shall conduct a preliminary review of each complaint and determine whether an investigation of the alleged misconduct is warranted, whether the matter shall be mediated or whether no further action is necessary. This decision shall be made in accordance with the rules promulgated by the Commission. Preliminary review may be waived with the unanimous vote of the Commission to proceed with an investigation. All complaints shall be kept on file regardless of whether an investigation is initiated.

§ 78112. Community Petitions.

On the petition of fifty (50) or more residents of Guam filed in any location or locations designated by the Commission, the Commission shall hold a special meeting for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission. In no case shall the Commission meet later than five (5) working days following the date the petition is filed to conduct a preliminary review of the concern of the petitioners.

§ 78113. Investigations.

If the Commission determines that further investigation is warranted, the complaint shall be investigated by an Independent Special Attorney and/or an Independent Special Investigator selected and hired by the

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Commission. Completion of investigation may be held in abeyance during such time as the Commission determines that an investigation might impede or harm a criminal investigation. Nothing in this Chapter shall prevent or preclude taking action or the prosecution of criminal conduct under the laws of Guam.

§ 78114. Evidentiary Hearings.

Upon the completion of the investigation of a complaint, the Commission may dismiss, with the filing of written reasons for the dismissal, the complaint for lack of merit or conduct an evidentiary hearing. At an evidentiary hearing, the Commission shall weigh and consider all evidence presented. The Commission shall make reasonable efforts to commence and complete evidentiary hearings within ten (10) working days of the completion of the investigation. The Chairperson of the Commission shall appoint a panel of three (3) or five (5) members to conduct such evidentiary hearing. The Chairperson of the Commission shall designate a chairperson of each panel.

§ 78115. Subpoena.

Upon approval of a majority of its members, the Commission shall have power to subpoena witnesses, compel their attendance, require the production of evidence and any such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it, administer an oath and examine any person under oath in connection with any subject relating to a duty imposed upon or a power vested in the Commission. Subpoenas shall be signed and oaths administered by the Chairperson of the Commission. Subpoenas so issued may be served by any police, parole or probation officer, or other law enforcement officer, or hired or contracted personnel of the Commission in the same manner as similar process in the Superior Court. Service of subpoena shall be made at least three (3) working days *prior* to the time fixed in the subpoena for appearance or production of records, *unless* a shorter period of time is authorized by majority vote of all of the members of the Commission in a particular instance when, in their opinion, the giving three (3) working days' notice is *not* practicable; but if a shorter period of time is authorized, the person to whom the subpoena is directed shall be given reasonable notice consistent with the particular circumstances involved.

Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena, shall be

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subject to the same orders and penalties to which a person before a court is subject. The Superior Court, upon application of the Commission, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Commission, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before such court.

§ 78116. Testimony.

(a) The Commission shall cause a record to be made of all proceedings in which testimony or other evidence is received or adduced, which record shall include rulings of the chair, questions of the Commission and its authorized representative, the testimony or responses of witnesses, sworn written statements which the Commission authorizes a witness to submit and such other matters as the Commission or its Chairperson may direct.

(b) All testimony given at a hearing shall be under oath or affirmation, *unless* the requirement is dispensed with in a particular instance by majority vote of the Commission members present at the hearing.

(c) Any member of the Commission may administer an oath or affirmation to a witness.

(d) The Chairperson or a designated presiding officer at a hearing or an investigative hearing may direct a witness to answer any relevant question or furnish any relevant book, paper or other document. *Unless* the direction is overruled by majority vote of the Commission members present, disobedience shall constitute grounds for citation for contempt, *except* that production of any book, paper or other document may be required only by subpoena.

(e) A witness at a hearing, or his counsel, with the consent of a majority of the Commission members present at the hearing, may file with the Commission for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter and scope of the Commission's investigation or inquiry.

§ 78117. Requirement of Cooperation by Government Agencies and Departments.

Any official or employee of the Department and all other government employees and officials shall, *except* as expressly prohibited by law subsequent to this Act, respond promptly to any and all reasonable requests for information, for participation in meetings and evidentiary hearings, and

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for access to data and records for the purpose of enabling the Commission to carry out its responsibilities under this Chapter. The failure by any official or employee of the Department or by any government employee or official to comply with such requests for information, participation, or access shall be guilty of a misdemeanor and shall be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or both.

§ 78118. Findings of Fact and Determination.

Within ten (10) working days of the completion of an evidentiary hearing, and within thirty-five (35) working days of the receipt of complaint, the Commission shall issue a written report containing findings of fact and a determination of whether the complaint is sustained to the Attorney General's Office and to the Chief of Police along with its recommendation for disposition. *If* the Commission, after the evidentiary hearing, determines that further investigation is necessary and directs further investigation, it shall include such finding in its report and shall *not* be required to disclose any further findings until the additional investigation is complete and an evidentiary hearing thereon is held consistent with the provisions of this Act.

§ 78119. Chief of Police Disciplinary Decision.

When a complaint is sustained, the findings of fact and the determination shall be submitted to the Chief of Police, who shall make a disciplinary decision based upon this information. The Chief of Police shall provide the Commission with a written explanation of the reason or reasons for his or her disciplinary decision. In any case in which the Commission disagrees with the decision of the Chief of Police, the Commission may investigate the matter further and shall determine the disciplinary action to be carried out by the Chief of Police. Such decision by the Commission shall be deemed final and binding and *not* subject to reversal by the Chief of Police.

§ 78120. Mediation.

The Commission shall consider, when agreed upon by the complainant, the Commission, the Department and the subject employee, mutually agreeable resolution of any complaint in all cases *except* those involving the death or deaths of an individual or individuals. The Commission shall adopt rules and regulations to effectuate this provision. Nothing in this Section

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shall be construed to preclude or prevent the prosecution of criminal conduct under any laws applicable to Guam.

§ 78121. Notice to Parties.

The Commission shall notify in a timely fashion, in writing, the complainant(s) and police officer(s) of the status or disposition of the complaint in a reasonable manner.

§ 78122. Period of Limitation.

No person may file a complaint with the Commission if one hundred twenty (120) days has elapsed since the alleged misconduct, or since its discovery, whichever is later.

§ 78123. Rights of Employees.

(a) When an employee is to be questioned or interviewed concerning a complaint or allegation, the employee shall be informed *prior to* the interview of the nature of the investigation and whether he or she is the subject of the investigation or a witness in an investigation. Where requested, an employee shall be given up to twenty-four (24) hours to contact, consult with and secure the attendance of a representative at the interview. *If* he or she is the subject of the investigation, the employee will also be informed of each complaint or allegation against him and be permitted to review all written statements made by the complainant and witnesses immediately prior to the beginning of the investigative interview.

(b) The employee subject of an investigation under this Section shall, upon request, receive a copy of his written or recorded statement at no cost to the employee. No recording or transcription of the investigative interview will be made without the knowledge of all participants present at the interview.

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§ 78124. Annual Report.

The Commission shall compile and publish, by the end of each fiscal year, a report including the number, kind and status of all complaints received, and any recommendations and concerns to improve the implementation of the provisions of this Chapter, the performance of the Department and its employees, and the relationship between the Department and the community.

§ 78125. Severability.

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

§ 78126. Review.

Upon the enactment of this bill into law and immediately following the re-establishment of the Commission, the Commission *shall* review Chapter 78 in its entirety and submit its recommendations to *I Liheslaturan Guåhan* within one hundred twenty (120) days. In particular, the Commission *shall* review § 78119; *shall* consider office space and budgetary needs; and *shall* consider the implications of its action on the Civil Service Commission's adverse action procedures.

SOURCE: Added by P.L. 30-076:5 (Jan. 22, 2010).
