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Office of the Attorney General

August 13, 2008

LEGAL MEMORANDUM

Ref: DOA 07-0198

TO: Director, Department of Administration

FROM: Attorney General *(Signature)*

SUBJECT: Compliance with P.L. 28-98; Government Employees and the Sex Offender Registry

We hereby respond to your Memorandum of March 13, 2007 inquiring about enforcement of P.L. 28-98, which prohibits convicted sex offenders from working for the government of Guam. According to the Memorandum, the Guam Police Department (GPD) has created a form for employees to sign to consent to the release of information on their criminal convictions. Some government employees are reluctant to sign the consent form because they fear loss of employment or being mistakenly included in the Sex Offender Registry. You also inquire as to whether *I Maga'lahi* can direct GPD to investigate the criminal records of all government employees without their consent. The thrust of your Memorandum seems to be whether government or personal liability will arise from said actions.

Section 1 of P.L. 28-98 creates a new 4 GCA §4203.3:

No person convicted of a sex offense under the provisions of Chapter 26 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes...all of the elements of said offenses, or who is listed on the Sex Offender Registry shall work in any agency or instrumentality of the government of Guam.

This statute applies only to persons *convicted* of sex offenses. Those who are arrested and not charged or who are charged and not convicted are still free to seek or remain in government employment. Therefore, the only records needed to enforce P.L. 28-98:1 are judgments of conviction, i.e. the court document that states that the defendant was convicted and the crime for which he was convicted. Judgments of conviction are public records and are open to public inspection. See 6 GCA §1005; 5 GCA §10113; 9 GCA §89.10.

Thus, no personal or government liability should arise for obtaining the information without the employees' consent. On the contrary, P.L. 28-98:1 implies that GovGuam

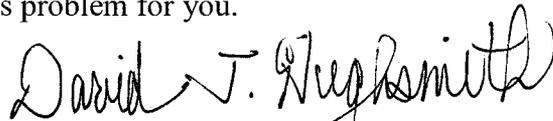
management must obtain the information. Otherwise, it would be neglecting its duty to execute the laws. It is simply not an invasion of anyone's privacy to examine and collect court judgments.

Thus, the government does not need an employee's written or oral consent to obtain court records of his convictions. Most of this information should be contained in the Sex Offender Registry, which is already on the internet. *I Maga'lahi* may direct GPD or other officials to peruse court records, but that is already being done in that sex crime convictions should be routinely placed in the Sex Offender Registry. Chapter 89, 9 GCA.

Furthermore, P.L. 28-98:3 directs you to maintain a list of all government employees who are sex offenders. However, this raises the question of whether current employees who were convicted of sex crimes in the past should now be terminated from GovGuam employment. If they were convicted of crimes committed before passage of P.L. 28-98, their termination would violate the constitutional prohibition on ex post facto punishment. See Title 48 U.S.C. 1421(b); California Department of Corrections vs. Morales, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995); Russell vs. Gregorio, 124 F.3d 1079 (9th Cir. 1997).

Employees convicted of sex crimes committed after the passage of P.L. 28-98, should be terminated upon conviction as required by P.L. 28-98:1; however, termination must be done pursuant to an adverse action. 4 GCA §4406.

We hope that this clarifies and simplifies this problem for you.


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