

Alicia G. Limtiaco
Attorney General



Alberto E. Tolentino
Chief Deputy Attorney
General

Office of the Attorney General

September 11, 2008

LEGAL MEMORANDUM

Ref: DOC 07-1169

TO: Chairperson, Guam Parole Board

FROM: Attorney General *ALG*

SUBJECT: Work Release for Inmates Convicted of Criminal Sexual Conduct

We hereby respond to your request of March 14, 2007 about whether inmates or parolees who were convicted of Criminal Sexual Conduct may perform community service at such public locations as the Mayors' offices, GHURA, Department of Labor, non-profit organizations and the like.

First, it is clear that DOC inmates convicted of First or Second Degree Criminal Sexual Conduct are not eligible for work release or educational programs outside the prison. 9 GCA §§25.15(b) and 25.20(b). Furthermore, 9 GCA §81.10 prohibits any inmate convicted of Criminal Sexual Conduct (CSC), regardless of the degree of the offense, from working at parks, beaches and other public places under government control. Therefore, we believe that no inmate with a CSC conviction can work outside the prison unless it is at a private entity and unless he was convicted of Third or Fourth Degree Criminal Sexual Conduct.

The question remains as to whether parolees with CSC convictions can perform community service work in government facilities. As your inquiry indicates, P.L. 28-98, which was passed in 2006, prohibits anyone convicted of CSC from working for the government. The pertinent language is in P.L. 28-98 enacted and amended, respectively, 4 GCA §4203.3 and 5 GCA §5253(a).

4203.3. Prohibition: Sex Offenders Prohibited from Employment in Agencies and Facilities of the Government of Guam. (a) No person convicted of a sex offense...shall work in any agency or instrumentality of the government of Guam.

(emphasis added).

5253. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.

(a) No person convicted of a sex offense...and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

(emphasis added).

These statutes create a strong policy against any person convicted of a sex offense working on government property. Although Section 4203.3 does not specifically mention parolees or persons doing community service, it does use the word "work" instead of the term "employ". Therefore, we believe it refers to all kinds of "work", including volunteer work and parolees' work obligations, and not just to gainful employment. Please note also that the title of Section 4203.3 indicates that it applies not just to government employment but also to presence at government facilities. These statutes intend to restrict these convicts altogether from daily presence at all government venues. They do not, however, prohibit a convict from entering the premises to conduct business, such as meeting with his village Mayor or attending a public meeting.

The Superior Court will often, as part of its sentence, order a convicted sex offender to refrain from contact with children and to avoid playgrounds, schools and other public places frequented by children. These court orders must be complied with. The appropriate authorities should review the sex offender's plea agreement and judgment before authorizing his/her work location.

Your inquiry suggests that 4 GCA §2112 may authorize these persons to work at government venues. However, Section 2112 applies to "volunteers", those residents of Guam who donate their time and effort to community causes without pay, not convicts. Furthermore, Section 2112 exempts volunteers from submitting police clearances and screening fees but does not authorize anyone to do anything. It does not say convicts may work anywhere. Since it does not create an exception to the general exclusion enacted by Section 4203.3, it does not apply to convicts.

Therefore, we believe that it would violate Guam law to permit persons convicted of sex crimes to perform community service at Mayor's offices, GHURA or other government venues. Other convicts, of course, may continue to work at such facilities.


DAVID J. HIGHSMITH
Assistant Attorney General