



*Kotperasion Setbision Defensot Publeku*

## **PUBLIC DEFENDER SERVICE CORPORATION**

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February 9, 2023

37<sup>th</sup> Guam Legislature  
Guam Congress Building  
Hagåtña, Guam

### **Re: Support for Bill 33-37 and a request for a Public Hearing**

Dear Senators of the 37<sup>th</sup> Guam Legislature:

*Buenas yan hâfa adai.* We, the Director and Deputy Director of PDSC and the Managing Attorney of APD, petition the Legislature to provide salary parity for the PDSC and APD.

According to the American Bar Association (ABA), attorneys and staff in defender offices should be paid at a rate “comparable to that provided for their counterparts in prosecutorial offices.”<sup>1</sup> To achieve this, the Board could adopt a finding that the 15% prosecutor pay differential enacted in Public Law 36-107 is adequate funding for the retention and recruitment of prosecutors,<sup>2</sup> and further be resolved in advancing the mission of the PDSC by raising the level of salaries of public defenders to that of their counterparts in the Office of the Attorney General (OAG).

Enacted as Public Law 36-107, the Government of Guam budget act for fiscal year 2023 (2023 Budget Act) appropriated funding, *inter alia*, for the implementation of pay raises for certain government attorneys including public defenders who stand to receive a modest 6% increase.<sup>3</sup> Despite efforts of this august Body to address longstanding recruitment and attrition issues in public defense, the 36th Guam Legislature subsequently passed an amendment to 2023 Budget Act for a 15% differential pay for prosecutors of the OAG.<sup>4</sup> Inasmuch as we laud the Legislature’s commitment to bolstering our criminal justice system, the 2023 Budget Act as amended on the floor clearly has inadvertently exacerbated the longstanding resource parity between the island’s public defenders and prosecutors.

The ABA has recognized that parity in workload, salaries, and resources between public defenders and prosecutors is essential to an effective and ethical criminal justice system.<sup>5</sup> Instead of comparing the defense

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<sup>1</sup> AMERICAN BAR ASSOCIATION, STANDARDS ON CRIMINAL JUSTICE, 5-4.1 (1993); *see also* NATIONAL STUDY COMMISSION ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, Guideline 3.2 (1974) (salaries for all staff should “in no event be less than” salaries for comparable positions in prosecutor’s office).

<sup>2</sup> *See* 5 Guam Code Ann. § 30104.1 (added by Guam Public Law 36-107 (Sept. 12, 2022)) (“Notwithstanding any other provision of law, attorneys serving as prosecutors shall be entitled to special pay, calculated at the rate of their regular wage plus fifteen percent (15%). The Office of the Attorney General shall provide special pay to all attorneys serving as prosecutors in the Office of the Attorney General.”).

<sup>3</sup> Substitute Bill No. 276-36 (COR) (enacted as P.L. 36-107 (Sept. 12, 2022)), VII:II:4 (“The sum of [] (\$370,184) is appropriated [] to the Public Defender Service Corporation, of which [] (\$309,432) shall be allocated to the Public Defender Service Corporation and [] (\$60,752) shall be allocated to the Alternate Public Defender, to fund a [] (7%) increase in compensation for law enforcement personnel, and a [] (6%) increase in compensation for non-law enforcement personnel in Fiscal Year 2023.”).

<sup>4</sup> *See* 5 GCA § 30104.1, *supra* note 2.

<sup>5</sup> AMERICAN BAR ASSOCIATION, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, 3 (2002) (“The Principles constitute the fundamental criteria necessary to design a [public defense] system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.”).

resources available in one jurisdiction to the defense resources elsewhere, the principle of parity is premised on the adequate funding and support of the prosecutor's office, so that obtaining parity will mean that defense counsel is able to provide quality legal representation.<sup>6</sup>

The 15% differential pay for prosecutors was conceived to help OAG improve recruitment and retention of qualified criminal attorneys, according to justice committee chair Speaker Therese Terlaje who introduced the amendment at the tail end of several weeks of floor discussions.<sup>7</sup> Warning that "vacancies in the [OAG's] prosecutorial division may have serious impacts on our ability as an island to properly enforce our laws, [to] properly prosecute crime, [to] properly deter crime, and to bring justice," Speaker Terlaje opined that an investment to fund the proposed differential is necessary to adequately support the OAG. "[W]ithout prosecutors—or with overburdened [] or dissatisfied prosecutors—we have a revolving door of persons getting arrested, charged, released, [or] pleaded out, or go[ing] to trial and not convicted."<sup>8</sup>

Inasmuch as prosecutors are indispensable in the efficient administration of justice, the Sixth and Fourteenth Amendments to the U.S. Constitution obligate the Government of Guam to provide effective representation to the indigent accused at all critical stages of criminal or delinquency cases that carry loss of liberty as a potential punishment.<sup>9</sup> Local rules similarly provide that counsel must be appointed for a person financially unable to obtain adequate representation.<sup>10</sup> Cases do not get dismissed due to a shortage of prosecutors, cases get dismissed when there are no defense attorneys available to represent those charged with crimes. <https://www.opb.org/article/2022/11/22/oregon-public-defender-shortage-multnomah-county-dismissed-cases/>, <https://apnews.com/article/health-oregon-covid-portland-a13c2ecf6e4648272dfa12fb9244b7a6>.

However, a pay disparity between public defenders and prosecutors not only reflects inequality in compensation for comparable work, but it also inherently undermines the legitimacy of our criminal legal system in the eyes of the public.

Today, public defense attorneys continue to provide effective legal consultation and services to Guam's indigent population by safeguarding individual rights in all criminal and related matters, from arrest or threat of confinement through all stages of the criminal proceedings including appeal and parole, if any, consistent with applicable laws, court rules, and rules of professional responsibility; and within prescribed ethics, standards and goals set by the Board and management.

This year we celebrate the 60<sup>th</sup> anniversary of *Gideon v. Wainwright*, the U.S. Supreme Court case which made the right to counsel a constitutional right. As public defenders, we are extremely proud of our work as we continue to handle the daily challenges of serving our client population. We have a constitutional responsibility to ensure that defendants stand equal before the law and are afforded rights to due process and other constitutional, statutory, and procedural guarantees. In the last year, we have lost two attorneys to the AG's office. We fully expect that if parity is not achieved that we will lose more. We are humbly requesting parity with prosecutors. We ask that the playing field be leveled and that the balance to the scales of justice be restored. Such can be accomplished without additional appropriations for this fiscal year.

<sup>6</sup> *See id.*

<sup>7</sup> *See* 36th Guam Legislature FY 2023 Budget Session, Committee of the Whole (Aug. 29, 2022), <https://www.youtube.com/watch?v=cYBjLNRLq5k>.

<sup>8</sup> *See id.*

<sup>9</sup> U.S. CONST. amend. VI, XIV, § 1; 48 U.S.C.A. § 1421b(e), (u); *see Johnson v. Zerbst*, 304 U.S. 458, 462 (1932) (recognizing a Sixth Amendment right to counsel for criminal defendants facing loss of life or liberty).

<sup>10</sup> LOCAL RULES OF THE SUPERIOR COURT OF GUAM, Miscellaneous Rule 1.1.1(a)(4) ("The court shall appoint counsel for a person financially unable to obtain adequate representation who is [...] entitled to appointment of counsel under the Sixth Amendment to the United States Constitution, or facing loss of liberty and Guam law, the United States Constitution, or the applicable provisions of the Organic Act, require the appointment of counsel.").

We would like to thank Senators Quinata and Parkinson for recognizing the need and importance of restoring balance to the scales of justice. We invite all Senators to take a similar stand and co-sponsor this measure and request a public hearing.

*Senseramente,*



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Stephen P. Hattori, Director PDSC



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Ana Maria C. Gayle, Managing Attorney, APD



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John P. Morrison, Deputy Director, PDSC