

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
2024 SECOND QUARTER REPORT**

SUBMITTED TO THE  
GOVERNOR OF GUAM,  
SPEAKER OF THE GUAM LEGISLATURE, AND  
CHIEF JUSTICE OF GUAM  
AUGUST 13, 2024

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
JUDICIARY OF GUAM  
GUAM JUDICIAL CENTER  
120 WEST O'BRIEN DRIVE  
HAGÅTÑA, GUAM 96910

## PREFACE

The Guam Criminal Law and Procedure Review Commission (CLRC or Commission) submits its second quarter report for 2024 summarizing its activities as required by 1 GCA § 25.07(a). Because the CLRC began operations in January of 2023, quarterly reports are based on the calendar year, rather than the fiscal year. This second quarter report summarizes activities from April 1, 2024 through June 30, 2024.

## CLRC STATUTORY AUTHORITY

The CLRC was created by *I Liheslaturan Guåhan* in Public Law 36-119 (enacted Nov. 9, 2022) to conduct the first complete review of Guam's Criminal and Correctional Code and Criminal Procedure Code since their creation by the 13<sup>th</sup> Guam Legislature in 1976. Under P.L. 36-119, the CLRC exists as a division of the Supreme Court of Guam and receives administrative support from the Judiciary of Guam.

Under P.L. 36-119, the Commission is composed of 15 members representing the three branches of government, the Guam Bar Association (to include attorneys with prosecutorial and criminal defense experience), full-time and retired judicial officers, directors of government criminal justice and public safety agencies, and private individuals from community-based and public interest organizations relating to the criminal justice system. It is chaired by Superior Court Magistrate Judge Jonathan R. Quan and administered by a full-time Executive Director and one staffer.

## CLRC STAFF AND MEMBERS (updated)

Governor's Appointees	Hon. Maria T. Cenzone, Hon. Anita A. Sukola, Ms. Valerie Reyes
Speaker's Appointees	Attorney Phillip Tydingco, Attorney Michael Phillips, Attorney Christine Tenorio
Chief Justice's Appointees	Hon. Jonathan R. Quan, Attorney F. Randall Cunliffe, Mr. Monty McDowell
Guam Bar President Appointees	Attorney Joseph B. McDonald, Attorney William B. Brennan
Statutory Members (or Designees)	Attorney General of Guam (Designee DAG Nathan Tennyson), Chief of Police (Designee Lt. Ron Taitano), Director of Corrections (Designee Maj. Antone F. Aguon), Executive Director of Public Defender Service Corp (Designee Deputy Director John Morrison)
Compiler of Laws	Attorney Geraldine Cepeda
Staff	Attorney Andrew Serge Quenga (Executive Director), Rennae Vanessa Meno (Administrative Support)
Ex-officio (auxiliary)	Hon. Elizabeth Barrett-Anderson, Attorney Kat Siguenza, Attorney Sean Brown, Attorney Brian Eggleston, Attorney Leonardo Rapadas

## SIGNIFICANT CLRC ACTIVITIES APRIL – JUNE 2024

1. During the second quarter, the Commission convened Plenary Meetings on April 4, 2024 and June 13, 2024. Members deliberated on various agenda items, including recommendations to amend sections and chapters of the Criminal Code of Guam. The agendas, approved minutes, meeting packet and YouTube video links for these meetings are available on the CLRC website.

During the April 4, 2024 Plenary Meeting, the following presentations were made:

- The Subcommittee on Drugs & Other Criminal Offenses presentation was tabled.
- The Subcommittee on Criminal Procedure presented its review of 9 GCA Chapters 1 and 4. All recommendations of this Subcommittee that were approved for moving to the final reading file or tabled for further discussion are memorialized in **Attachment 1**, which includes proposed amendments with changes tracked.

During the June 13, 2024 Plenary Meeting, the following presentations were made:

- The Subcommittee on Drugs & Other Criminal Offenses presentation was tabled.
  - The Subcommittee on Criminal Procedure presented its review of 9 GCA Chapter 7. All recommendations of this Subcommittee that were approved for moving to the final reading file or tabled for further discussion are memorialized in **Attachment 2**, which include proposed amendments with changes tracked.
  - The Subcommittee on Crimes Relating to Property continued discussion of chapters previously. All recommendations of this Subcommittee that were approved for moving to the final reading file or tabled for further discussion are memorialized in **Attachment 3**, which include proposed amendments with changes tracked.
2. On July 17, 2024, the Commission provided a status presentation and report to the Legislature. This report is posted on the Commission's webpage.
  3. During the second quarter, subcommittees continued their review of statutes during working session meetings or by independent member review during the months of April to June 2024.

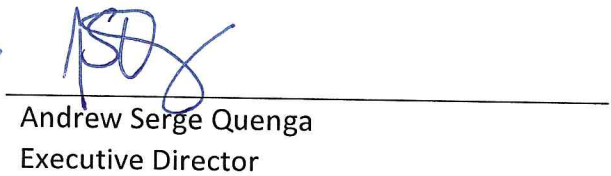
All recommendations approved at Plenary Meetings are subject to further review. Sections and chapters tabled will be presented at a subsequent Plenary Meeting.

## CONCLUSION

During the second quarter of 2024, the Commission made significant progress in the review of the Criminal Code of Guam. The work of the CLRC continues to the best of the ability of each member. Our Subcommissions have the daunting task of reviewing thousands of criminal statutes throughout the Guam Code Annotated. Aside from the very small full-time staff of the CLRC, each member must devote significant time to reviewing their assigned chapters and sections of the Criminal Code and discussing any proposed changes in working sessions with their respective Subcommissions. Our appointed and ex-officio volunteer members consist almost entirely of full-time attorneys with clients and litigation caseloads, high-ranking government law enforcement officials and private citizens with full-time work obligations. Chairman Quan and I thank all members for their commitment and diligence to the work of the Commission.



Magistrate Judge Jonathan R. Quan  
Chairman



Andrew Serge Quenga  
Executive Director



## ATTACHMENT 1

### RECOMMENDATIONS OF THE SUBCOMMISSION ON CRIMINAL PROCEDURE PRESENTED AT THE PLENARY MEETING OF APRIL 4, 2024

#### TITLE 9 GUAM CODE ANNOTATED

##### **§ 1.10. Short Title.**

This ~~Code~~ Title 9 of the Guam Code Annotated shall be known as the Guam Criminal and Correctional Code.

**CLRC COMMENT:** Non-substantive clarification and for consistency with the first section of Title 8 GCA.

##### **~~§ 1.12. Severability.~~**

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

**CLRC COMMENT:** Repeal and reenact as a new § 1.12 (Rules of Construction) with severability included as subsection (g).

##### **§ 1.12. Rules of Construction.**

Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.

(a) Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.

(b) Whenever any reference is made to any portion of this Code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

(c) The present tense includes the past and future tenses; and the future, the present.

(d) The masculine gender includes the feminine and neuter.

(e) The singular number includes the plural; and the plural, the singular.

(f) Shall is mandatory and may is permissive.

(g) If any provisions of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

**CLRC COMMENT:** Reenacted § 1.12 consolidating the other rules of construction sections of this chapter: § 1.12 (Severability), § 1.34 (Rules of Construction), § 1.36 (Headings), § 1.38 (Amendments Included), § 1.42 (Tenses), § 1.44 (Gender), § 1.46 (Number), § 1.48 (Shall and May).

**§ 1.14. Purpose for Defining Offenses-Purposes, Principles of Construction.**

(a) The general purposes of the provisions governing the definition of offense are:

(1) to forbid, prevent, and condemn conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;

(2) to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentence authorized, the rehabilitation of those convicted, and their confinement when required in the interest of public protection;

(3) to subject to public control persons whose conduct indicates that they are disposed to commit offenses;

(4) to give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;

(5) to differentiate on reasonable grounds between serious and minor offenses; and

(6) to define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault.

(b) The general purposes of the provisions governing the sentencing of offenders are:

(1) to prevent and condemn the commission of offenses;

(2) to promote the correction and rehabilitation of offenders;

(3) to assure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protections;

(4) to safeguard offenders against excessive, disproportionate, or arbitrary punishment;

(5) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;

(6) to differentiate among offenders with a view to a just individualization in their treatment;~~and~~

(7) to advance the use of generally accepted scientific methods and knowledge in sentencing offenders~~;~~;

(8) to promote restitution to victims;

(9) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and

(10) to impose sentences no more severe than necessary to achieve the societal purposes for which they are authorized.

(c) The provisions of this Code shall be construed according to the fair import of their terms, but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by this Code shall be exercised in accordance with



the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.

**CLRC COMMENT:** Non-substantive clarification of title from source MPC § 1.02. Added subsection (b)(8) is from New Jersey and promotes restitution to victims. Added subsection (b)(9) is from the United States Code and promotes educational, vocational and medical care of inmates. Added subsection (b)(10) safeguards against disproportionate punishment.

#### **§ 1.16. Territorial Applicability.**

(a) Except as otherwise provided in this Section, a person may be convicted under the law of ~~this Territory~~ Guam of an offense committed by his own conduct or the conduct of another for which he is legally accountable if;

(1) he conduct which is an element of the offense or the result which is such an element occurs within ~~this Territory~~ Guam;

(2) conduct occurring outside the Territory is sufficient under the law of ~~this Territory~~ Guam to constitute an attempt to commit an offense within ~~the Territory~~ Guam;

(3) conduct occurring outside ~~the Territory~~ Guam is sufficient under the law of ~~this Territory~~ Guam to constitute a conspiracy to commit or offense within ~~the Territory~~ Guam and an overt act in furtherance of such conspiracy occurs within ~~the Territory~~ Guam;

(4) conduct occurring within ~~the Territory~~ Guam establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which is also an offense under the law of ~~this Territory~~ Guam.

(5) the offense consists of the omission to perform a legal duty imposed by the law of ~~this Territory~~ Guam with respect to domicile, residence, or a relationship to a person, thing, or transaction in ~~the Territory~~ Guam; or

(6) the offense is based on a statute of ~~this Territory~~ Guam which expressly prohibits conduct outside ~~the Territory~~ Guam when the conduct bears a reasonable relation to a legitimate interest of ~~this Territory~~ Guam and the person knows or should know that his conduct is likely to affect that interest.

(b) ~~Paragraph (1) of~~ Subsection (a)(1) does not apply when either causing a specified result or an intent to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(c) ~~Paragraph (1) of~~ Subsection (a)(1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside ~~the Territory~~ Guam which would not constitute an offense if the result had occurred there, unless the person intentionally or knowingly caused the result within ~~the Territory~~ Guam.

(d) When the offense is homicide, either death of the victim or the bodily impact causing death constitutes a "result," within the meaning of ~~Paragraph (1) of S-subsection~~ (a)(1) and if the

body of a homicide victim is found within ~~the Territory Guam~~, it is presumed that such result occurred within ~~the Territory Guam~~.

(e) ~~the Territory Guam~~ includes the land and water and the air space above such land and water with respect to which ~~the Territory Guam~~ has legislative jurisdiction.

(f) Notwithstanding that territorial jurisdiction may be found under this Section, the court may dismiss, hold in abeyance for up to six months, or with the permission of the defendant, place on an inactive list a criminal prosecution under the law of this Territory where it appears that such action is in the interests of justice because the defendant is being or is likely to be prosecuted for an offense based on the same conduct in another jurisdiction and ~~the Territory Guam's~~ interest will be adequately served by a prosecution in the other jurisdiction.

**CLRC COMMENT:** Amendments for consistency with 1 GCA § 420. Other amendments are for clarification of citations.

#### **§ 1.18. Classes of Crimes.**

(a) An offense defined by this Code or by any other statute of ~~this Territory Guam~~, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors or petty misdemeanors.

(b) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which, apart from an extended term, is in excess of one year.

(c) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto.

(d) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(e) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto or if it is defined by a statute other than this Code which now provides that person convicted thereof may be sentenced to imprisonment for a maximum term of less than one year.

(f) An offense defined by this Code or by any other statute of ~~this Territory Guam~~ constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(g) An offense defined by any statute of ~~this Territory Guam~~ other than this Code shall be classified as provided in this Section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

**CLRC COMMENT:** Amendments for consistency with 1 GCA § 420.

#### **§ 1.19. Felonies Defined and Classified.**

(a) Felonies defined by this Code are classified, for the purpose of sentence, into three degrees, as follows:



- (1) felonies of the first degree;
- (2) felonies of the second degree;
- (3) felonies of the third degree.

Any crime declared to be a felony, without specification of degree, is of the third degree.

(b) Notwithstanding any other provision of law, a felony defined by any statute of ~~this Territory~~ Guam other than this Code shall constitute for the purpose of sentence a felony of the third degree.

**CLRC COMMENT:** Amendments for consistency with 1 GCA § 420.

#### **§ 1.20. Relationship of Code to Other Laws; Contempts, Penalties and Remedies.**

(a) No conduct constitutes an offense unless it is a crime or violation under this Code or other statute of ~~this Territory~~ Guam.

(b) The provisions of this Code shall apply to offenses defined by other statutes, unless otherwise expressly provided or unless the context otherwise requires.

(c) Nothing in this Code shall affect the power of a court to punish contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(d) Nothing in this Code shall bar or suspend any liability for damages, penalty, forfeiture, or other remedy otherwise authorized by law to be recovered or enforced in any civil action or proceeding, for any conduct punishable by this Code.

**CLRC COMMENT:** Amendment for consistency with 1 GCA § 420.

#### **§ 1.22. Prosecution for Conduct Which Constitutes More Than One Offense.**

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other as defined in 8 GCA § 105.58 ~~of the Criminal Procedure Code~~;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other,

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

**CLRC COMMENT:** Non-substantive citation clarification.



#### **§ 1.24. Double Jeopardy. Same Offense.**

A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(b) The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this Subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of fact. Termination under any of the following circumstances is not improper:

(1) the defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination;

(2) the trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed; or

(3) the trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity.

**CLRC COMMENT:** Non-substantive typographical correction.

#### **§ 1.26. Double Jeopardy. Different Offense.**

A prosecution of a defendant for a violation of a different provision of the statutes or based on different facts than a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is for:

(1) any offense of which the defendant could have been convicted on the first prosecution;

(2) any offense of which the defendant should have been tried on the first prosecution under ~~Subsection (b) of § 65.30 of the Criminal Procedure Code~~ 8 GCA § 65.30(b) unless the court ordered a separate trial of the charge of such offense; or

(3) the same conduct, unless (A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil, or (B) the second offense was not consummated when the former trial began.

(b) The former prosecution was terminated, after the complaint was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(c) The former prosecution was improperly terminated, as improper termination is defined in § 1.24, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

**CLRC COMMENT:** Non-substantive citation clarification.

**§ 1.28. Concurrent Jurisdiction. When a Bar to Prosecution.**

When conduct constitutes an offense within the concurrent jurisdiction of ~~this Territory~~ Guam and of the United States or any state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in ~~this Territory~~ Guam under the following circumstances:

(a) the first prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is based on the same conduct, unless (1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or (2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or (3) the second offense was not consummated when the former trial began; or

~~(1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or~~

~~(2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or~~

~~(3) the second offense was not consummated when the former trial began; or~~

(b) the former prosecution was terminated after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which

has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

**CLRC COMMENT:** Amendment for consistency with 1 GCA § 420. Amendment to subsection (a) to return the format of the paragraph to the format provided in the source MPC and NJ statutes with no substantive changes.

**§ 1.30. Former Prosecutions. When Not a Bar to Present Prosecution.**

A prosecution is not a bar within the meaning of §§ 1.24, 1.26 and 1.28 under ~~either~~ any of the following circumstances:

(a) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense tried in that court; or

(b) The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a petition for post-conviction relief or similar process, except that any bar as to reprosecution for a greater inclusive offense created by ~~Subsection (a) of § 1.24(a)~~ shall apply.

(c) The former prosecution resulted in a plea of guilty or nolo contendere which was held invalid in an appeal under 8 GCA § 130.15(e) and the defendant may be retried as if the former plea had not been entered.

**CLRC COMMENT:** Non-substantive grammatical correction and citation clarification.

**~~§ 1.34. Rules of Construction.~~**

~~Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.~~

**CLRC COMMENT:** Repeal and reenact into consolidated revised §1.12.

**~~§ 1.36. Headings.~~**

~~Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.~~

**CLRC COMMENT:** Repeal and reenact into consolidated revised §1.12.

**~~§ 1.38. Amendments Included.~~**

~~Whenever any reference is made to any portion of this Code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.~~

**CLRC COMMENT:** Repeal and reenact into consolidated revised §1.12.

**~~§ 1.42. Tenses.~~**

~~The present tense includes the past and future tenses; and the future, the present.~~

**CLRC COMMENT:** Repeal and reenact into consolidated revised §1.12.



**~~§ 1.44. Gender.~~**

~~The masculine gender includes the feminine and neuter.~~

**CLRC COMMENT:** Repeal and reenact into consolidated revised §1.12

**~~§ 1.46. Number.~~**

~~The singular number includes the plural; and the plural, the singular.~~

**CLRC COMMENT:** Repeal and reenact into consolidated revised §1.12.

**~~§ 1.48. Shall and May.~~**

~~Shall is mandatory and may is permissive.~~

**CLRC COMMENT:** Repeal and reenact into consolidated revised §1.12.

**§ 1.60. General Definitions Applicable to Entire Title.**

Unless otherwise expressly stated:

~~(a) Chapter means a chapter of this Title.~~

~~(b) Article means an article of the chapter in which that term occurs.~~

~~(c) Section means a section of this Code.~~

~~(d) Subsection means a subsection of the section in which that term occurs.~~

~~(e) Paragraph means a paragraph of the subsection in which that term occurs.~~

~~(f) Person means any natural person, partnership, firm, association, corporation or other legal entity.~~

**CLRC COMMENT:** Repeal unnecessary definitions.

**~~§ 1.80. Territory.~~**

~~As used in this Code, Territory means the territory of Guam.~~

**CLRC COMMENT:** Amendment for consistency with 1 GCA § 420.

**§ 4.45. Same Culpable Mental State: When Inapplicable.**

The culpable mental state requirements of § 4.25 and § 4.40 do not apply if the offense is a violation or if the law defining the offense clearly indicates purpose to dispense with any culpable mental state requirement.

**CLRC COMMENT:** Non-substantive amendment to section title.

**§ 4.70. Criminal Liability for Acts of Another: Non-Availability of Certain Defenses Not Available.**

In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is no defense that:

(a) the offense can be committed only by a particular class of persons to which the defendant does not belong; or

(b) the other person has legal immunity from prosecution, or has not been prosecuted for or convicted of an offense based upon the conduct in question, or has previously been acquitted.

**CLRC COMMENT:** Non-substantive amendment to section title.

**§ 4.75. ~~Same~~ Criminal Liability for Acts of Another: Defenses Available.**

Unless otherwise provided by law, in any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is a defense that:

(a) the defendant was a victim of the offense; or

(b) under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant withdrew from participation in the offense and made a reasonable effort to stop the commission of the offense.

**CLRC COMMENT:** Non-substantive amendment to section title.



## ATTACHMENT 2

### RECOMMENDATIONS OF THE SUBCOMMISSION ON CRIMINAL PROCEDURE PRESENTED AT THE PLENARY MEETING OF JUNE 13, 2024

#### TITLE 9 GUAM CODE ANNOTATED

##### **§ 7.10. Exemption from Criminal Liability Due to ~~Juvenile~~ Minor Status.**

No person may be tried for or convicted of an offense if:

(a) his age at the time he is charged with an offense places him within the exclusive jurisdiction of the Family Division of the Superior Court;

(b) he was made the subject of a petition to commence proceedings in the ~~juvenile court~~ Family Court because of having committed the offense and the ~~juvenile court~~ Family Court has not made an order that he be prosecuted under general law; or

(c) he was certified to the ~~juvenile court~~ Family Court and the ~~juvenile court~~ Family Court 22 has not made an order directing that he be prosecuted under general law.

**CLRC COMMENT:** “Juvenile” in the title changed to “minor,” which is the term defined and used in the Family Court Act (19 GCA § 5102). “Juvenile Court” changed to “Family Court” per 19 GCA Chapter 5 (The Family Court Act), which replaced “Juvenile Court” in the 1970 Code of Civil Procedure Title V, Chapter I.

#### Article 2 Mental Responsibility

##### **§ 7.16. Defense: Mental Disease or Defect.**

A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental illness, disease or defect, he lacked substantial capacity to know or understand what he was doing, or to know or understand that his conduct was wrongful, or to control his actions.

##### **§ 7.19. Same Mental Disease or Defect: Admissibility of Evidence Showing.**

Evidence that the defendant suffered from mental illness, disease or defect is admissible whenever it is relevant to prove the defendant’s state of mind.

**CLRC COMMENT:** Non-substantive amendment to section title.

##### **§ 7.22. Same Mental Disease or Defect: Procedure for Assertion of.**

(a) Mental illness, disease or defect, precluding responsibility, is an affirmative defense which the defendant must prove by a preponderance of the evidence.

(b) The defendant may not introduce evidence that he is not criminally responsible, as defined in § 7.16, unless he has entered a plea of not guilty by reason of mental illness, disease or defect.

(c) The defendant may not, except upon good cause shown, introduce in his case in chief expert testimony regarding his state of mind pursuant to § 7.19 unless he has given notice as provide in Subsection (d).

(d) The defendant shall plead not guilty by reason of mental illness, disease or defect, or shall give notice, in open court or in writing, that his mental condition will or may be in issue not later than ten days after his arraignment or at such later time as the court for good cause may allow. If such notice is given prior to or at the time of arraignment, the court shall defer the entry of a plea until the filing of the reports provided in § 7.25. Upon the giving of such notice or upon a plea of not guilty by reason of mental illness, disease or defect, the court shall order an examination to be conducted, as provided in § 7.25.

(e) Upon the filing of the reports provided in § 7.25, the defendant shall plead if he has not previously done so and the court shall set a date for trial. The trial shall not be held earlier than ten days after the filing of the reports.

**CLRC COMMENT:** Non-substantive amendment to section title.

**§ 7.31. Acquittal: Verdict Must State Reason as Mental Illness, Disease or Defect.**

Whenever a plea of not guilty by reason of mental illness, disease or defect is entered and the defendant is acquitted on the plea, the verdict or, if trial by jury has been waived, the finding of the court and the judgment shall so state.

**CLRC COMMENT:** Non-substantive amendment to section title.

**§ 7.34. Acquittal: Court Order of Commitment or Release; Petition for Discharge.**

(a) After entry of judgment of not guilty by reason of mental illness, disease or defect, the court shall, on the basis of the evidence given at the trial or at a separate hearing, make an order as follows:

(1) If the court finds that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others and is not in need of care, supervision or treatment, the court shall order him discharged from custody.

(2) If the court finds that the person is affected by mental illness, disease or defect and that he presents a substantial danger to himself or the person or property of others, but he can be controlled adequately and given proper care, supervision and treatment if he is released on supervision, the court shall order him released subject to such supervisory orders of the court, including supervision by the probation department, as are appropriate in the interest of justice and the welfare of the defendant. Conditions of release in such orders may be modified from time to time and supervision may be terminated by order of the court as provided in Subsection (b).

(3) If the court finds that the person presents a substantial risk of danger to himself or the person or property of others and that he is not a proper subject for release on supervision, the court shall order him committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment.

(b) At any time within five years of the original entry of the order of release on supervision made pursuant to ~~Paragraph (2) of~~ Subsection (a)(2), the court shall, upon motion of either the prosecution or such person, or upon its own motion, and after notice to the prosecution and such person, conduct a hearing to determine if, or to what extent, the person remains affected by mental illness, disease or defect. If the court determines that the person remains affected by mental illness, disease or defect, the court may release him on further supervision, as provided in Subsection (a), but for not longer than five years from the original entry of the order of release on supervision, or if the court determines that the person is affected by mental illness, disease or defect and presents a substantial danger to himself or to the person or property of others and cannot adequately be controlled if released on supervision, it may make an order committing the person to the Administrator of the Guam Memorial Hospital for custody, care and treatment. If the court determines that the person has recovered from his mental illness, disease or defect or, if affected by mental illness, disease or defect, no longer presents a substantial danger to himself or the person or property of others and no longer requires supervision, care or treatment, the court shall order him discharged from custody.

(c) If, after at least ninety days from the commitment of any person to the custody of the Administrator, the Administrator is of the opinion that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others, the Administrator may apply to the court which committed the person for an order of discharge. The application shall be accompanied by a report setting forth the facts supporting the opinion of the Administrator. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.

(d) Any person who has been committed to the Administrator for custody, care and treatment, after the expiration of ninety days from the date of the order of commitment, may apply to the court by which he was committed for an order or discharge upon the grounds that he is no longer affected by mental illness, disease or defect, or if so affected, that he no longer presents a substantial danger to himself or the person or property of others. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.

(e) The court shall conduct a hearing upon any application for release or modification filed pursuant to Subsections (c) and (d). If the court finds that the person is no longer suffering from mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others, the court shall order him discharged from custody or from supervision. If the court finds that the person would not be a substantial danger to himself or to the person or property of others, and can be controlled adequately if he is released on supervision, the court shall order him released as provided in ~~Paragraph (2) of~~ Subsection (a)(2). If the court finds that the person has not recovered from his mental illness, disease or defect and cannot adequately be controlled if he is released on supervision, the court shall order him remanded for care and treatment.

In any hearing under this Subsection, the court may appoint one or more qualified psychiatrists or other qualified persons to examine the person and to submit reports to the court.

Reports filed with the court pursuant to such appointment shall include, but need not be limited to, an opinion as to the mental condition of the person and whether the person presents



a substantial danger to himself or the person or property of others. To facilitate the expert's examination of the person, the court may order him placed in the temporary custody of any suitable facility.

(f) Any person who, to this Section, has been in the custody of the Administrator of the Guam Memorial Hospital or on release on supervision by the court for a period in excess of five years shall, in any event, be discharged if he does not present a substantial danger to the person of others.

**CLRC COMMENT:** Non-substantive amendments citation clarification. Tabled for further discussion.

**§ 7.37. Mental Disease: a Bar to Proceeding or Sentence.**

A person can neither be proceeded against nor sentenced after conviction while he is incompetent as defined in this Section:

(a) A defendant is incompetent to be proceeded against in a criminal action if, as a result of mental illness, disease or defect, he is unable

- (1) to understand the nature of the proceedings,
- (2) to assist and cooperate with his counsel,
- (3) to follow the evidence, or
- (4) to participate in his defense.

(b) A defendant is incompetent to be ~~sentence~~ sentenced if, as a result of mental illness, disease or defect, he is unable

- (1) to understand the nature of the proceedings,
- (2) to understand the charge of which he has been convicted,
- (3) to understand the nature and extent of the sentence imposed upon him or
- (4) to assist and cooperate with his counsel.

**CLRC COMMENT:** Non-substantive typographical correction.

**§ 7.40. ~~Same~~ Mental Illness: Hearing to Determine.**

(a) At any time before the commencement of the trial either party may make a motion for a hearing on the defendant's competency to be proceeded against, or the court on its own motion may order such a hearing. Thereupon, the court shall suspend all proceedings in the criminal prosecution and proceed as provided in § 7.25.

(b) At any time after the commencement of the trial, but before sentence, if it appears on the motion of either party or the court's own motion that there is reasonable cause to believe the defendant is incompetent to be proceeded against or sentenced, the court shall suspend all proceedings in the criminal prosecution and proceed as provided in § 7.25. The trial jury in the criminal prosecution may be discharged or retained at the discretion of the court until the defendant's competency is determined. The dismissal of the trial jury shall not be a bar to further prosecution.

(c) If the court for any reason once proceeds under § 7.25, then upon a second or subsequent notice or plea under § 7.22, or upon a second or subsequent motion under this Section, the court does not have to suspend the proceedings in the criminal prosecution and again proceed as provided in § 7.25, except upon a showing of good cause of changed conditions.

**CLRC COMMENT:** Non-substantive amendment to section title.

**§ 7.43. Same Mental Illness: Hearing Procedure for Commitment and Release.**

(a) If at least one psychiatrist concludes in his report filed pursuant to § 7.25 that the defendant may be incompetent to be proceeded against or to be sentenced, the court shall order the issue of his competency to be determined within ten days after the filing of the reports pursuant to § 7.25, unless the court, for good cause, orders the issue tried at a later date.

(b) Any hearing under this Section shall be by the court without a jury.

(c) If the court finds that the defendant is competent to be proceeded against or to be sentenced, the proceedings shall be resumed, or judgment be pronounced.

(d) If the court finds that the defendant is incompetent to be proceeded against or sentenced but that there is a substantial likelihood that he will regain his competency in the foreseeable future, the court shall order him committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment and shall require the Administrator to furnish the court with reports on the defendant's progress at least once every six months.

(e) Whenever, in the opinion of the Administrator or any officer designated in writing by him, the defendant regains his competency, the Administrator or such officer shall, in writing, certify that fact to the clerk of the court in which the proceedings are pending. Such certification, unless contested by the defendant or the people, shall be sufficient to authorize the court to find the defendant competent and to order the criminal prosecution to continue. If the certification is contested, a hearing before the court shall be held, after notice to the parties, and the party so contesting shall have the burden of proving by a preponderance of the evidence that the defendant remains incompetent.

Upon a finding of competency, the defendant may apply for his release pending trial in the manner provided by 8 GCA Chapter 40 (commencing with § 40.10) of the Criminal Procedure Code.

Upon written request by the court or either party, filed with the clerk of the court and served upon the superintendent of the institution in which the defendant is or was confined, the superintendent shall file with the clerk of the court the defendant's complete medical records, or such portion thereof as is designated in the request, or a certified copy thereof, while at said institution.

(f) If at any time the court determines that the defendant is incompetent and that there is no substantial likelihood that he will regain his competency in the foreseeable future, the court, upon its own motion, or upon motion of either party, and after reasonable notice to the other party and an opportunity to be heard, shall dismiss the pending indictment, information, or other criminal charges and order the defendant to be released or order the commencement of any available civil commitment proceedings.



(g) A finding or certificate that the defendant is mentally competent shall in no way prejudice the defendant in his defense on the plea under § 7.22 or in his defense under § 7.19. Such finding or certificate shall not be introduced in evidence on such issues or otherwise brought to the notice of the jury.

(h) The proceedings under this section shall be part of the criminal proceedings and included in the file of that case.

(i) Any period for which the defendant is committed pursuant to this Section shall be credited against any sentence which may later be imposed on him for the offense with which he charged.

**CLRC COMMENT:** Non-substantive amendment to section title and citation clarification.

**§ 7.46. ~~Same~~ Mental Disease: Commitment as Exonerating Bail.**

The commitment of the defendant pursuant to § 7.43 exonerates any depositor or surety who has provided security pursuant to 8 GCA Chapter 40 (commencing with § 40.10) ~~of the Criminal Procedure Code~~ and entitles such person to the return of any money or property he may have deposited.

**CLRC COMMENT:** Non-substantive amendment to section title and citation clarification.

**§ 7.49. ~~Same~~ Mental Disease: Hearing and Procedure When Mental Disease or Defect Occurs After Sentence.**

If at any time after the imposition of sentence and during the period a person is in the custody of the Director of Corrections or is subject to a sentence of probation or parole the Director of Correction has reasonable cause to believe that the person may as a result of mental illness, disease or defect, present a substantial danger to himself or the person or property of others, the directors shall so report to the Attorney General who shall file a motion for a judicial determination whether such person should be committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment. A similar motion may be and upon behalf of such person. The motion and the determination shall be made in the manner provided by § § 7.25, 7.40 and 7.43. If the court finds that the person as a result of mental illness, disease or defect, presents a substantial danger to himself or the person or property of others, the court shall order him to be committed to the custody of the Administrator of the Guam Memorial Hospital. Time spent in such detention shall be counted towards any sentence of confinement previously imposed. Either the Administrator or the person committed may apply for discharge in the manner provided by ~~Subsections (c) and (d) of § 7.34~~ (c) and (d). The court shall conduct a hearing on such application in the manner provided by ~~Subsection (e) of § 7.34~~ (e) and make such order releasing the person or returning him to probation, parole or custody of the Director of Corrections as may be required.

**CLRC COMMENT:** Non-substantive amendment to section title and citation clarification.

### Article 3 Defenses

#### **§ 7.55. Specific Defenses Defined and Allowed Ignorance Mistake.**

(a) A person's ignorance or mistake as to a matter of fact or law is a defense if it negatives the culpable mental state required for the offense or establishes a mental state sufficient under the law to constitute a defense.

(b) A person's belief that his conduct does not constitute a crime is a defense only if it is reasonable and,

(1) if the person's mistaken belief is due to his ignorance of the existence of the law defining the crime, he exercised all the care which, in the circumstances, a law-abiding and prudent person would exercise to ascertain the law; or

(2) if the person's mistaken belief is due to his misconception of the meaning or application of the law defining the crime to his conduct,

(A) he act in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in a statute, judicial decision, administrative order or grant of permission, or an official interpretation of the public officer or body charged by law with the responsibility for interpreting, administering or enforcing the law defining the crime; or

(B) he otherwise diligently pursues all means available to ascertain the meaning and application of the crime to his conduct and honestly and in good faith concludes his conduct is not a crime in circumstances in which a law-abiding and prudent person would also so conclude.

(c) The defendant must prove a defense arising under Subsection (b) by a preponderance of the evidence.

**CLRC COMMENT:** Non-substantive amendment to section title.

#### **§ 7.64. Other Defenses Consent.**

(a) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) When conduct is an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

(1) neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;

(2) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

(3) the conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and

the persons subjected to such conduct or injury have been made aware of the risks involved prior to giving consent.

(c) Assent does not constitute consent, within the meaning of this Section, if:

(1) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifested or known to the defendant;

(2) it is given by a person who by reason of intoxication as defined in § 7.58, mental illness or defect, or youth, is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(3) it is induced by force, duress or deception.

**CLRC COMMENT:** Non-substantive amendment to section title and citation clarification.

**§ 7.67. Appropriateness of Prosecution De Minimis Infractions.**

The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

(a) Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;

(b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(c) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense. The court shall not dismiss a prosecution under this Subsection without filing a written statement of its reasons.

**CLRC COMMENT:** Non-substantive amendment to section title and citation clarification.

**§ 7.70. Entrapment as Affirmative Defense.**

(a) It is an affirmative defense that the defendant committed the offense in response to an entrapment, except as provided in Subsection (c).

(b) Entrapment occurs when a law enforcement agent, for the purpose of obtaining evidence of the commission of an offense, induces or encourages a person to engage in proscribed conduct, using such methods of inducement as to create a substantial risk that the offense would be committed by persons other than those who are ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(c) The defense afforded by this Section is unavailable when causing or threatening serious bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.



(d) As used in this Section, law enforcement agent includes personnel of federal and territorial law enforcement agencies, and any person cooperating with such an agency.

(e) The issue of entrapment shall be tried by the trier of fact.

**CLRC COMMENT:** Non-substantive amendment to section title and citation clarification.

**~~§ 7.73. Specific Defenses Defined and Allowed; Ignorance or Mistake; Intoxication; Duress, Compulsion; Consent; De Minimis Infractions; Entrapment; and Renunciation.~~**

(a) In a prosecution for an attempt, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

(b) In a prosecution for criminal facilitation, it is an affirmative defense that, prior to the commission of the crime which he facilitated, the defendant made a reasonable effort to prevent the commission of such crime.

(c) In a prosecution for criminal solicitation, or for conspiracy, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the criminal or otherwise unlawful conduct contemplated by the conspiracy, as the case may be.

(d) A renunciation is not “voluntary and complete” within the meaning of this Section if it is motivated in whole or in part by:

(1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime; or

(2) a decision to postpone the criminal conduct until another time or to substitute another victim or another but similar objective.

**CLRC COMMENT:** Non-substantive amendment to section title and citation clarification.

**Article 4  
Justification**

**CLRC COMMENT:** Tabled.

**Article 5  
Castle Doctrine Act**

**CLRC COMMENT:** Tabled.

### ATTACHMENT 3

#### RECOMMENDATIONS OF THE SUBCOMMISSION ON CRIMES RELATING TO PROPERTY PRESENTED AT THE PLENARY MEETING OF JUNE 13, 2024

#### TITLE 9 GUAM CODE ANNOTATED

##### § 34.50. Criminal Mischief; Defined.

A person commits *criminal mischief* if:

- ~~(a) — under circumstances not amounting to arson he damages or destroys property with the intention of defrauding an insurer; or~~
- ~~(b) — he intentionally tampers with the property of another or forest land and thereby:
  - ~~(1) recklessly endangers human life; or~~
  - ~~(2) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or~~~~
- ~~(c) — he intentionally damages the property of another or forest land; or~~
- ~~(d) — he intentionally damages the motor vehicle of another.~~

**CLRC COMMENT:** Amendments for consistency with amendments to § 34.60.

##### § 34.60. Criminal Mischief; Punished.

~~(a) A violation of subsections (b) or (d) of § 34.50 is a third degree felony.~~

~~(b) a) A violation of subsection (a) of § 34.50 is a second degree felony if the defendant's conduct causes or is intended to cause pecuniary loss of Five Thousand Dollars (\$5,000.00) or more, a third degree felony if the defendant's conduct causes or is intended to cause pecuniary loss of Twenty-Five Hundred Dollars (\$2500.00) or more in excess of Five Hundred Dollars (\$500.00), a misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss of Five Hundred Dollars (\$500) or more in excess of Fifty Dollars (\$50.00), and a petty misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss of less than Five Hundred Dollars (\$500.00) in excess of Twenty-four Dollars (\$24.00). Otherwise, criminal mischief is a violation.~~

~~(c) Any adult convicted under subsection (c) of § 34.50, Title 9, Guam Code Annotated, is guilty of a misdemeanor punishable by imprisonment for not less than a mandatory forty eight (48) hours nor more than one year and a fine of two hundred fifty dollars (\$250.00) for the first offense, five hundred dollars (\$500.00) for the second offense and one thousand dollars (\$1000.00) for each subsequent offense.~~

In the case of a minor, the parents or the legal guardian shall be jointly and severally liable with the minor for the payment of all fines. Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents' or legal guardian's property to include the fine and court costs. Upon an application and finding of indigence, the court may decline to order fines against the minor or parents.



In addition to any punishment listed in subsection (e ~~b~~), the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the defendant's offense in the amount or manner determined by the court. Furthermore, the person or if a minor, his or her parents, shall re-paint or refurbish the property so damaged, destroyed, removed, or defaced at such person's expense, under the supervision of the affected property owner or a court representative. The person shall also perform a minimum of one hundred eighty (180) hours but not to exceed three hundred sixty (360) hours of community service. Parents or legal guardians of any minor found to have violated this subsection shall also be responsible for providing supervision as well as paying for the fine if the minor is unable to do so.

~~(d**b**)~~ The court may order that any person punished under ~~§ 34.60(c) or § 34.70, Title 9, Guam Code Annotated~~ this section, who is to be punished by imprisonment, shall be confined on days other than days of regular employment of the person, or on days other than school days if the defendant is a minor, as determined by the court.

**CLRC COMMENT:** Subsection (a) removed to clarify that punishment is based on grading values. Subsection (b) grading values of offenses increased after review of other jurisdictions' grading values for criminal mischief; and classification of "violation" as an offense removed. Subsection (c) language regarding mandatory minimums removed for uniformity with 9 GCA Chapter 80 (Disposition of Offenders).

#### **§ 46.30. Issuance of Dishonored Checks.**

(a) Definitions. For the purpose of this section, the following terms have the meanings given them.

(1) *Check* means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(2) *Credit* means an arrangement or understanding with the drawee for the payment of a check.

(b) Acts constituting. Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check and may be sentenced as provided in subsection (b)(1). In addition, restitution may be ordered by the court.

(1) Penalties. A person who is convicted of issuing a dishonored check under subsection (b) is:

(A) guilty of a petty misdemeanor ~~punishable by imprisonment for not more than sixty (60) days or by payment of a fine of not more than \$500, or both,~~ if the value of the dishonored check, or checks aggregated under paragraph (2), is not more than Five Hundred Dollars (\$500.00) \$250; or

(B) guilty of a misdemeanor ~~punishable by imprisonment for not more than one (1) year, or by payment of a fine of not more than \$2,000, or both,~~ if the value of the dishonored check, or checks aggregated under paragraph (2), is equal to or more than Five Hundred Dollars (\$500) but less than Two-Thousand Five Hundred dollars (\$2,500.00) \$250, but not more than \$1000; or

(C) guilty of a felony of the third degree ~~punishable by imprisonment for not more than five (5) years, or by payment of a fine of not more than \$5,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (2), is equal to or more than \$2,500.00 but less than \$10,000.00. or more is more than \$1,000.~~

(D) guilty of a felony of the second degree if the value of the dishonored check, or checks aggregated under paragraph (2), is \$10,000.00 or more.

(2) In a prosecution under this paragraph, the value of dishonored checks issued by the defendant in violation of this subsection within any six-month period may be aggregated and the defendant charged accordingly in applying this section.

(c) Proof of intent. Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

(1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

(2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection; or

(3) proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection.

Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within thirty (30) days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

(d) Proof of lack of funds or credit. If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

(e) Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

**CLRC COMMENT:** Grading values of offenses increased and second degree of offense created.

#### **§ 46.35. Fraudulent Use of Credit Cards; Defined & Punished.**

(a) A person commits an offense if he uses a credit card or the account number of a credit card account with the intent of obtaining property or services with knowledge that:



- (1) the card or account number is stolen or forged;
- (2) the card or account number has been revoked or cancelled; or
- (3) for any other reason his use of the card is unauthorized.

(b) It is an affirmative defense to prosecution under Paragraph (3) of Subsection (a) if the defendant proves by a preponderance of the evidence that he had the ability and intended to meet all obligations to the issuer arising out of his use of the card.

(c) Credit card means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(d) An offense under this Section is:

1. A petty misdemeanor if the value of the property or services secured or sought to be secured by means of the credit card is equal to or less than Five Hundred Dollars (\$500.00);

2. A misdemeanor if the value of the property or services secured or sought to be secured by means of the credit card is greater than Five Hundred Dollars (\$500.00) and less than Two-Thousand Five Hundred dollars (\$2,500.00);

3. ~~a~~A felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card ~~exceeds \$500 otherwise it is a misdemeanor~~ is equal to or greater than Two Thousand Five Hundred Dollars (\$2,500.00) and less than Ten Thousand Dollars (\$10,000.00);

4. A felony of the second degree if the value of the property or services secured or sought to be secured by means of the credit card is equal to or greater than Ten Thousand Dollars (\$10,000.00).

**CLRC COMMENT:** Add offense levels and amend offense grading values.

**§ 46.80. Impersonation; Identity Theft; Defined & Punished.**

(a) A person commits an offense when that person:

(1) impersonates another or assumes a false identity and does an act in such assumed character or false identity to obtain a benefit for oneself or another, or to injure or defraud another;

(2) pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit for oneself or for another, or to injure or defraud another;

(3) impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;

(4) possesses or obtains any personal identifying information pertaining to another person, without the authorization of that person, and uses or attempts to use that information, or assists another person in using the information, for any unlawful purpose, including to:



(A) fraudulently obtain, or attempt to obtain, money, credit, goods, services, anything of value, or medical information in the name of another person;

(B) injure or defraud, or attempt to injure or defraud, another person;

(C) avoid, or attempt to avoid, the payment of debt or other legal obligation; or

(D) avoid, or attempt to avoid, prosecution for a crime in the name of the other person without the consent of that person.

(b) As used in this Section, *personal identifying information* means the name, address, telephone number, driver's license or driver's license number, social security card or social security number, passport or passport number, official government of Guam or other state identification card or number, mother's maiden name, demand deposit account number, savings account number, credit card or credit card number, or a debit card or debit card number, or any name or number that may be used, alone or in conjunction with any other information, to assume the identity of a person. The list in this Subsection is *not* exhaustive.

(c) An offense under this Section is:

1. A petty misdemeanor if the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, if any, is equal to or less than Five Hundred Dollars (\$500.00).

2. A misdemeanor if the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, if any, is greater than Five Hundred Dollars (\$500.00) and less than Twenty-Five Hundred Dollars (\$2,500.00).

3. A felony of the third degree if the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, if any, is equal to or greater than Twenty-Five Hundred Dollars (\$2,500.00) and less than Ten Thousand Dollars (\$10,000.00).

4. a felony of the second degree if the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, if any, is ~~at least Five Thousand Dollars (\$5,000.00); otherwise, it is a felony of the third degree~~ equal to or greater than Ten Thousand Dollars (\$10,000.00).

(d) A person found guilty of violating any provisions of this Section shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of such violation. Financial loss may include any costs incurred by such victim in correcting the credit history of such victim, or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.

(e) In any case in which a person obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of Subsection (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did *not* commit the crime.

**CLRC COMMENT:** Add offense levels and amend offense grading values.

**§ 46.103. Classification of Offense.**

(a) Notwithstanding any other administrative, civil, *or* criminal penalties, a person who violates §46.102 of this Chapter is guilty of a:

~~(1) misdemeanor when the value is *or exceeds* Three Hundred Dollars (\$300) but is *less than* One Thousand Dollars (\$1,000);~~

~~(2) third degree felony when the value is *or exceeds* One Thousand Dollars (\$1,000) but is *less than* Five Thousand Dollars (\$5,000);~~

~~(3) second degree felony when the value is *or exceeds* Five Thousand Dollars (\$5,000);~~

~~(4) second degree felony when the object *or purpose* of the commission of an act of mortgage fraud is other than the obtaining of something of monetary value; and~~

~~(5) second degree felony when the object *or purpose* of the commission of an act of mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the value.~~

~~(6) The determination of the degree of any offense under this Subsection (a) is measured by the total value of all property, money, *or things* obtained *or sought to be obtained* by a violation of §46.102 of this Chapter, *except as provided in Subsections (a)(4) and (5).*~~

(b) Each residential *or* commercial property transaction offense under this part constitutes a separate violation.

**CLRC COMMENT:** Grading offenses removed except second degree felony consistent with § 46.102.

**§ 70.15(j).** Physical injury means physical trauma, impairment of condition, or pain or illness produced by violence or by a thermal or chemical agent, ~~and includes, but is not limited to, starvation, dehydration, hypothermia, hyperthermia, muscle atrophy, restriction of blood flow to a limb or organ, mange or other skin disease, or parasitic infestation.~~

**CLRC COMMENT:** Removal of list of specific injuries as unnecessary and difficult to prove such as parasitic infection.

**Title 10 Guam Code Annotated  
Chapter 60 Firearms**

**§ 60109. Concealed Firearms.**

No identification card shall be issued permitting the holder to carry a concealed firearm of any nature unless:

~~(a) the applicant shows exceptional cause therefore. Such exceptional causes shall include, but not be limited to, facts which show that such concealment is absolutely necessary for an individual who is engaged in the protection of persons or property, or who shows that he has a genuine reason to fear for the safety of his person or property and that a concealed firearm would materially lessen the danger. Such permission, once stated upon the identification card, shall not~~



~~be renewed unless, at the time for renewal, the application shows a continuing need for such permission, using the standards for such permission as they exist at the time for renewal. It shall be unlawful for any person to carry any firearm concealed unless he has received permission to carry such firearm and such permission is stated upon the face of his identification card; or~~

~~(b) an applicant meets the requirements for a concealed firearms license as defined in §60109.1 of this Chapter. It shall be unlawful for any person to carry any firearm concealed unless he has received permission in accordance with the provisions of this Chapter to carry such firearm and such permission is stated upon the face of his identification card.~~

**CLRC COMMENT:** The “exceptional cause” requirement has been found to be unconstitutional *See New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

#### **§ 60110. Registration.**

Any person purchasing, receiving by gift, device or otherwise, acquiring or otherwise coming into permanent possession of a firearm, the possession of which is permitted by this chapter, shall register the same with the Department within ~~three (3)~~ five (5) working days after acquiring said firearm on the forms specified by the Department provided however any member of the United States Coast Guard or any Armed Forces of the United States arriving in Guam for a permanent change of station (“PCS”), or a dependent of the same, shall have 180 days from the arrival of the firearm(s) with their household goods to register such firearm(s). Failure to register shall result in a civil fine of \$10.00 per day that the firearm is unregistered, in addition to the other penalties provided in this chapter. Any such fines shall be paid to the Treasurer of Guam for the account of the Department of Revenue and Taxation. Such facts and information shall be given so as to enable the Department to record for identification purposes the firearm so registered. It shall be unlawful for any person to own or possess any firearm which has not been registered. No firearm may be registered by the Department unless the person presenting the firearm also displays current identification card evidencing his eligibility to own, possess, use or carry the firearm presented for inspection as to the facts required for registration. Any firearm registration which expires on or after March 1, 1988 or which is thereafter issued under this chapter shall be permanent for as long as the registrant retains the firearm. The Chief of Police shall promulgate rules and regulations establishing a permanent firearms identification card and a reasonable fee to cover the cost incurred.

**CLRC COMMENT:** Amendments to alleviate issues with military members registering firearms brought into Guam. Grace period is consistent with the grace period in § 60110.1.

#### **§ 60110.1. Firearms**

A grace period for payment of fees due for renewal of registration or for new registration for a firearm for any member of the United States Coast Guard or any Armed Forces of the United States including but not limited to the Guam National Guard or Reserves or a dependent of a member of the same of the Guam National Guard or Reserves, shall be in effect while that member is on active service outside Guam and for the next one hundred eighty (180) days after completion of such service. No interest or penalties shall be assessed for any period prior to expiration of the one hundred eighty (180) days.

**CLRC COMMENT:** Amendments for consistency with changes recommended for § 60110.