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Guam Criminal Law and Procedure Review Commission
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GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION 2025 THIRD QUARTER REPORT SUBMITTED TO THE

GOVERNOR OF GUAM,
SPEAKER OF THE GUAM LEGISLATURE, AND
CHIEF JUSTICE OF GUAM
OCTOBER 17, 2025

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

The Guam Criminal Law and Procedure Review Commission (CLRC or Commission) submits its third quarter report for 2025 summarizing its activities as required by 1 GCA § 25.07(a). Because the CLRC began operations in January of 2023, quarterly reports align with the calendar year instead of the fiscal year. This third quarter report summarizes activities from July 1, 2025 through September 30, 2025.

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 13th Guam Legislature in 1976. 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.

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

During the third quarter of 2025, the Commission consisted of the following members and staff.

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 AAG Emily Rees), Chief of Police (Designee Sgt Michael Elliott), Director of Corrections Fred Bordallo, Executive Director of Public Defender Service Corp (Designee Deputy Director John Morrison)
Compiler of Laws	Attorney Geraldine Cepeda (ex-officio)
Staff	Executive Director Andrew Serge Quenga (ex-officio), Administrative Assistant Lisa Ibanez, Research Attorney Gordon Anderson, Research Attorney Andrew Strega

Volunteer	Hon. Sean Brown, Hon. Elizabeth Barrett-Anderson, Attorney Kat Siguenza, Attorney Leonardo Rapadas, Attorney Kristine B. Borja, Attorney Zachary Taimanglo, Attorney Valerie Nuesa, Chief Probation Officer Rossanna Villagomez-Aguon, Chief Parole Officer Michael P. Quinata, Probation Officer Supervisor Jeremiah J.A. Cruz, Deputy Marshal III Kennedy G. Robinson, Deputy Marshal II Dodd Siegfred V. Mortera, Jr., Attorney Kristina Baird, Attorney Mary Hill
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SIGNIFICANT CLRC ACTIVITIES JULY – SEPTEMBER 2025

During the third quarter of 2025, the Commission held a Plenary Meeting on July 31, 2025. Members deliberated on a range of agenda items, including recommendations to amend sections and chapters of the Criminal Code of Guam. The agendas, meeting packets, and YouTube video links for these meetings are available on the CLRC website. During these meetings, the following presentations were made:

- July 31, 2025 Plenary Meeting
 - The Subcommittee on Criminal Procedure presented its continuing review of Chapter 7 (Exemptions and Defenses). All recommendations that were approved for moving to the final reading file or tabled for further discussion are memorialized in Attachment 1, which include proposed amendments with changes tracked.
 - The Subcommittee on Corrections-Related Chapters presented its review of Chapter 80 (Disposition of Offenders) Article 1 (General Provisions), Article 2 (Imprisonment), and Article 7 (Hormone or Anti-Androgen Pilot Treatment Program for Convicted Sex Offenders). All recommendations 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.
 - CLRC Research Attorney Gordon Anderson Presented his review of the unconstitutional status of § 80.38 under the Guam Supreme Court case of *People v. Muritok*, 2003 Guam 15, and explained the *Apprendi* doctrine requiring factual findings by a jury for enhanced sentencing. He also presented proposed options on § 80.38. Attorney Anderson’s presentation is available in the July 31, 2025 meeting packet posted on the CLRC webpage.

- The 2025 second quarter report of the Commission was issued a on July 11, 2025 and is available on the CLRC webpage.

CONCLUSION

During the third quarter of 2025, the Commission continued to make 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 face a daunting task reviewing thousands of criminal statutes throughout the Guam Code Annotated. Apart from the very small full-time staff of the CLRC, each member dedicates 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 volunteer members include full-time attorneys with active 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 JULY 31, 2025

TITLE 9 GUAM CODE ANNOTED

§ 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 has not made an order directing that he be prosecuted under general law.

CLRC COMMENT: Non-substantive amendments for consistency with the Family Court Act (19 GCA § 5102).

§ 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.

CLRC COMMENT: No change.

§ 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 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 provided 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 title. Correction of typo in (c).

§ 7.25. Psychiatric or Psychological Examination and Procedure.

CLRC COMMENT: Tabled for further discussion.

§ 7.28. Acquittal: Order for Civil Commitment.

In any case in which evidence of mental illness, disease or defect has been introduced pursuant to the provisions of § 7.19 and in which the defendant is acquitted, the court may order an evaluation of his condition and initiation of proceedings pursuant to the provisions of 10 GCA Chapter 82.

CLRC COMMENT: No change.

§ 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 title.

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

CLRC COMMENT: 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 sentenceded 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

CLRC COMMENT: Correction of typo in (b).

§ 7.40. ~~Same:~~ Mental Disease: 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 title.

§ 7.43. ~~Same:~~ Mental Disease: Hearing Procedure for Commitment and Release.

(a) If at least one qualified psychiatrist, licensed psychologist or other qualified person 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 § 40.10 et seq. ~~Chapter 40 (commencing with § 40.10 et seq)~~ 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 title. Subsection (a) amendments for consistency with amendments to § 7.25. Subsection (e) amendments for 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 § 40.10 et seq. ~~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 title. Other amendments for 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 title. Other amendments for clarification.

§ 7.52. Transfer of Committed Person Off-Island: Hearing and Notice to Attorney General Required.

Nothing in this Article shall be construed to hinder or to prevent the transfer of any person committed pursuant to this article to any hospital outside of Guam, for care and treatment. An application for transfer may be made by either the Administrator of the Guam Memorial Hospital or by or on behalf of the person committed. The application shall be made to the court which committed such person. A transfer may be made only upon court order after such notice to the Attorney General as the court shall require.

CLRC COMMENT: No change.

§ 7.55. ~~Specific Defenses Defined and Allowed~~ Ignorance or 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 acts 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: Amendment to title for clarification and consistency with source MPC § 2.04. Correction of typo in (b)(2)(A).

§ 7.58. Intoxication.

(a) As used in this Section:

(1) *intoxication* means an impairment of mental or physical capacities resulting from the introduction of alcohol, drugs or other substances into the body.

(2) *self-induced intoxication* means intoxication caused by substances which the person knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would otherwise afford a defense to a charge of crime.

(b) Except as provided in Subsection (d), intoxication is not a defense to a criminal charge. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.

(c) A person is reckless with respect to an element of the offense, even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.

(d) Intoxication which is not self-induced is an affirmative defense if, by reason of such intoxication, the person at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of the law.

CLRC COMMENT: No change.

§ 7.61. Duress or Necessity.

(a) In a prosecution for any offense it is an affirmative defense that the defendant engaged in the conduct otherwise constituting the offense:

(1) because he was coerced into doing so by the threatened use of unlawful force against his person or the person of another in circumstances where a person of reasonable firmness in his situation would not have done otherwise; or

(2) in order to avoid death or ~~great~~serious bodily ~~harm~~injury to himself or another in circumstances where a person of reasonable firmness in his situation would not have done otherwise.

(b) The defenses defined in this Section are not available if the offense is murder nor to a person who placed himself intentionally, knowingly or recklessly in a situation in which it was probably that he would be subjected to duress or compulsion.

CLRC COMMENT: Subsection (b) amendments for consistency with “serious bodily injury” in § 7.76.

§ 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: Amendment to title for clarification and consistency with source MPC § 2.11.

~~§ 7.67. Appropriateness of Prosecution. De Minimus 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: Amendment to title for clarification and consistency with source MPC § 2.12.

~~§ 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: Amendment to title for clarification and consistency with source MPC § 2.13.

~~§ 7.73. Specific Defenses Defined and Allowed; Ignorance or Mistake; Intoxication; Duress, Compulsion; Consent; De Minimus 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. Section only addresses renunciation. For consistency with source MPC § 5.01(g)(4).

ATTACHMENT 2
RECOMMENDATIONS OF THE AD HOC SUBCOMMISSION ON CORRECTION-RELATED
CHAPTERS PRESENTED AT THE PLENARY MEETING OF JULY 31, 2025

TITLE 9 GUAM CODE ANNOTATED

ARTICLE 1
GENERAL PROVISIONS

§ 80.00. Terms of Imprisonment are Fixed Terms.

All terms of imprisonment specified in the Guam Codes imposed upon conviction of an offense shall be fixed terms, having a determined termination date set at the time of sentencing by the court, except as provided for extension of terms of imprisonment under §§ 80.32 and 80.36 of this Code.

CLRC COMMENT: No change.

§ 80.10. Types of Sentences Allowed.

(a) Unless otherwise provided by law, the court may suspend the imposition of sentence of a person who has been convicted of a crime in accordance with § 80.60, may order him to be civilly committed in lieu of sentence in accordance with § 80.20, or may sentence him as follows:

- (1) to imprisonment for a term required by law;
- (2) to imprisonment and to an additional parole;
- (3) to pay a fine or make restitution as authorized by law;
- (4) to alternative community service or to self-improvement and rehabilitative programs;
- (5) to be placed on probation as authorized by law; ~~or~~
- (6) to pay a fine, to make restitution and to be placed on probation;~~;~~
- (7) to make restitution and imprisonment; or
- (8) to pay a fine and imprisonment.

(b) Where the judgment of conviction includeds more than one crime, the sentences imposed may run concurrently or consecutively except that if such sentences run consecutively, the provisions of §§ 80.38, 80.40 and 80.42 shall not be applicable.

(c) The court may suspend the imposition of sentence on a person who has been convicted of a violation or may sentence him to pay a fine or make restitution as authorized by § 80.50.

(d) Nothing in this Code deprives the court of any authority otherwise conferred by law to decree {a} forfeiture of property, suspend or cancel the license, remove a person from office or impose any other civil penalty, such a judgment or order may be included in the sentence.

CLRC COMMENT: Subsection (a) “civilly” added to reflect § 80.20 (Civil Commitments in Lieu of Prosecution in Certain Cases), Oxford comma added for clarity. Subsection (a)(6) separated for clarity. Subsection (b) grammatical correction; §§ 80.38, 80.40 and 80.42 (highlighted) were found to be unconstitutional under *Muritok* and may have to be stricken (pending more research). Subsection (d) deletion of unnecessary brackets.

§ 80.12. Presentence Report: Psychiatric Exam: Temporary Imprisonment for Classification.

(a) The ~~p~~Probation ~~s~~Services Division of the court shall make a presentence investigation and report to the court before the imposition of sentence unless the court otherwise directs for reasons stated on the record.

(b) The presentence report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(c) The presentence report of such investigation shall be in writing and so far as practicable shall include

- (1) an analysis of the circumstances attending the commission of the crime,;
- (2) the offender’s history of delinquency or criminality,;
- (3) physical and mental condition,;
- (4) family situation and background,;
- (5) social, economic and educational background,;
- (6) job experience and occupational skills and aptitude and personal habits,; and
- (7) any other matters that the probation officer deems relevant or the court directs to be included.

(d) Before making disposition in the case of person convicted of a felony or misdemeanor, the court may order the offender to submit to psychiatric observation or examination.

(1) The offender may be committed for this purpose for a period not exceeding twenty (20) days

(A) to a facility within or licensed by the Guam Behavioral Health and Wellness Center, or

(B) the court may appoint a qualified psychiatrist to make the examination.

(2) The report of the psychiatric observation or examination shall be submitted to the court in writing at such time as the court directs.

(e) If, after presentence investigation, the court desires additional information concerning an offender, it may order that he be committed, for a period not exceeding ninety (90) days, to the custody of the Department of Corrections, for observation and study at an appropriate reception or classification center before making a final disposition in the case.

(1) The department shall ~~advise~~ advise the court of its findings and recommendations on or before the expiration of such ninety-day period.

(2) If the offender is thereafter sentenced to imprisonment, the period of such commitment for observation shall be deducted from the maximum term of such sentence.

CLRC COMMENT: Subsection (a) clarification of the division's official name. Subsection (b) "presentence" added for consistency. Subsection (c) "presentence" added for consistency; semicolons added for consistency. Subsection (d) "psychiatric observation" added for consistency. Subsection (e)(1) grammatical correction.

Submitted to CLRC for consideration whether §§ 80.12 and 80.14 are procedural in form and substance and should be moved to Title 8 (Criminal Procedure Code) Chapter 120 (Judgment and Sentence). Recommend consideration of §§ 120.24 and 120.25, respectively.

§ 80.14. Presentence Report: Use Regulated.

(a) ~~[No text]~~ ~~(1)~~ The presentence report shall not be a public record. ~~(2)~~ It may be made available only;

(A~~1~~) to the sentencing court;

(B~~2~~) to any reviewing court where relevant to an issue on which an appeal has been taken;

(C~~3~~) to any examining facility, correctional institution, probation or parole department or board for use in the treatment or supervision of the offender; and

(4) to the parties as provided in this Section.

(b) At least ~~two~~ ~~(2)~~ five (5) days before imposing sentence the court shall furnish the offender, or his counsel if he is so represented, a copy of the presentence report ~~of the presentence investigation~~ exclusive of any recommendations as to sentence, unless in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the offender or his counsel an opportunity to comment thereon.

(c) If the court is of the view that there is information in the presentence report which should not be disclosed under Subsection (b), the court in lieu of making the report or part thereof available shall state in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the offender or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera but shall be included as part of the permanent record and subject to disclosure to the Parole Board.

(d) Any material disclosed to the offender or his counsel shall at the same time be disclosed to the attorney for the Government.

(e) ~~[No text]~~ ~~(1)~~ Any copies of the presentence ~~investigation~~ report made available to the offender or his counsel and the attorney for the Government shall be returned to the court immediately following the imposition of sentence.

~~(2)(f)~~ Copies of the presentence investigation report shall not be made by the offender, his counsel or the attorney for the Government.

CLRC COMMENT: Subsection (a): amendments and renumbering for clarification. Subsection (b): amendment on presentence report for consistency between sections; recommend increasing disclosure from 2 to 5 days. Subsection (e): amendments and renumbering for consistency and clarification. CLRC to consider moving this section to Title 8.

§ 80.16. Sentence of Corporation.

(a) The court may suspend the imposition of sentence of a corporation which has been convicted of an offense or may sentence it to pay a fine or make restitution authorized by § 80.50.

(b) When a corporation is convicted of a crime or a high managerial agent of a corporation is convicted of a crime committed in the conduct of the affairs of the corporation, the court, in sentencing the corporation or the agent, may direct the prosecuting attorney to institute civil proceedings in the Superior Court to forfeit the charter of a corporation organized under the laws of Guam or to revoke the certificate authorizing a foreign corporation to conduct business in Guam. In such proceedings, the court may order the charter forfeited or the certificate revoked upon finding:

(1) that the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, intentionally engaged in a persistent course of criminal conduct; and

(2) that for the prevention of future criminal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

CLRC COMMENT: No change.

§ 80.18. Chapter Not Applicable to Youth Offenders.

Nothing in this Chapter shall affect the power of the court to deal with a youth offender, as defined by § 83.15(d) in the manner provided by § 83.35.

CLRC COMMENT: Amendment for clarification.

§ 80.20. Civil Commitments in Lieu of Prosecution in Certain Cases.

(a) When a person prosecuted for a felony of the third degree, misdemeanor or petty misdemeanor is found by the court to be a chronic alcoholic, narcotic addict or person suffering from mental abnormality, the court may:

(1) order the civil commitment of such person to a hospital or other institution for medical, psychiatric or other rehabilitative treatment; and

(2) dismiss the prosecution.

The order of commitment may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

(b) The court shall not make an order under Subsection (a) unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

CLRC COMMENT: Subsection (a) amendment for clarification.

§ 80.22. Reduction by Court of Degree of Offense.

If, when a person has been convicted of an offense, the court, having regard to the nature and circumstances of the offense and to the history and character of the offender, is of the view that it would be unduly harsh to sentence the offender in accordance with the code, the court may enter judgment for a lesser included offense and impose sentence accordingly.

CLRC COMMENT: No change.

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ARTICLE 7

~~Hormone or Anti-Androgen Pilot Treatment Program for Convicted Sex Offenders~~

~~§ 80.101. Definitions.~~

~~§ 80.102. Hormone or Anti-Androgen Pilot Treatment Program Establishment, eligibility.~~

~~§ 80.103. Rules.~~

~~§ 80.104. Costs.~~

~~§ 80.105. Use of Hormone or Anti-Androgen Treatment Program with Persons not Included in Pilot Program; Referrals to the Program.~~

~~§ 80.106. Sunset Provision.~~

CLRC COMMENT: Repeal of this entire Article 7 is recommended by the Department of Corrections Parole Services Division. This pilot program was created by the Legislature in 2015 with a trial period of 48 months after implementation. This program has never been implemented.