



Judiciary of Guam

Administrative Office of the Courts
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910
Tel: (671) 475-3544 • Fax: (671) 475-3184



HON. ROBERT J. TORRES
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA, III
PRESIDING JUDGE

DANIELLE T. ROSETE, ESQ.
ADMINISTRATOR OF THE COURTS

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION (CLRC)

PLENARY MEETING | Thursday, October 5, 2023

In-person: Honorable Joaquin V.E. Manibusan Sr. Memorial Courtroom, Guam Judicial Center
via Videoconference (Zoom) and live streamed on the Judiciary of Guam YouTube Channel

MINUTES

I. CALL TO ORDER

Chairman Quan called the meeting to order at 12:00 p.m.

II. PROOF OF DUE NOTICE OF MEETING

Chairman Quan noted that public notices of the meeting were published pursuant to the Open Government Law and included in the meeting packet.

III. DETERMINATION OF QUORUM

ROLL CALL

Management Officer Valerie Cruz called the roll:

CLRC Members:

Hon. Jonathan R. Quan, Present, Judiciary of Guam

Hon. Anita A. Sukola, Absent

Atty. William Bucky Brennan, Present, Law Office in Hagatna

Acting Director of Corrections Fred Bordallo, Present (Judiciary of Guam)

Chief of Police Stephen Ignacio or Designee Lt. David Brantley, Absent

Atty. Joseph McDonald, Present (Judiciary of Guam)

Atty. Randall Cunliffe, Present, Law office in Hagatna

Mr. Monty McDowell, Present, Office in Harmon

PD Designee Atty. John Morrison, Present (Judiciary of Guam)

Asst. AG Marianne Woloschuk, Present, (via Zoom at AG's Office in Tamuning)

Atty. Michael Phillips, Absent

Ms. Valerie Reyes, Present (later logged on via Zoom)

Atty. Christine Tenorio, Present (Judiciary of Guam)

Atty. Phillip Tydingco, Present (Courts)

Ex-Officio, Non-Voting Members:

Executive Director Andrew S. Quenga, Present, (Judiciary of Guam)

Compiler of Laws Geraldine Cepeda, Present, (Judiciary of Guam)

Chairman Quan acknowledged a quorum present.

IV. DISPOSAL OF MINUTES: Approval of August 31, 2023 Plenary Meeting

Chairman Quan presented the minutes of the plenary meeting on August 31, 2023 for approval. Atty Phillip Tydingco moved to approve the minutes, seconded by Mr. Monty McDowell. With no opposition, the minutes were approved.

V. OLD BUSINESS

A. Membership Update

Director Quenga stated we are awaiting the Governor's appointment of a replacement for Hon. Elizabeth Barrett-Anderson, who had to step down due to her membership on the Criminal Injuries Compensation Fund.

B. Third Quarter Report

Director Quenga requested subcommissions to submit quarterly reports.

C. Overview of Approvals of Recommendations of the Subcommissions on Criminal Procedure and Crimes Relating to Property at Plenary Meeting of August 31, 2023

Chairman Quan reminded members of the process for recording recommendations to amend, repeal or no change.

VI. NEW BUSINESS

A. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommittee on Drug & Other Criminal Offenses for Discussion and Approval

Acting Chair Cepeda presented updates and outlined proposed revisions in a PowerPoint presentation (Attachment 1 hereto) and the subcommission's recommendations:

The subcommission recommended renumbering Chapter 90 in its entirety to a new numbering format to comport with the rest of the GCA.

- **Article 1 – Department of Correction**

- § 90.10 Renumber to 90101 and add new subsections.
- § 90.15 Renumber to 90102 and amend to create Mission Statement.
- § 90.16 Renumber to 90103 and amend to defer to POST.
- § 90.16.1 Renumber to 90104 and amend.
- § 90.20 Repeal. According to DOC, the Corrections Advisory Council has never met. Repeal references to Corrections Advisory Council in any part of the GCA.
- § 90.25 Renumber to 90105, amend and consolidate with other sections involving the authority of the Director.
- § 90.27 Consolidate under 90105.
- § 90.30 Consolidate under 90105.
- § 90.35 Consolidate under 90105 and amend.
- § 90.40 Consolidate under 90105 and amend.
- § 90.41 Renumber to 90115 and amend.
- § 90.42 Renumber to 90116 and amend.
- § 90.43 Consolidate under 90116 and amend.
- § 90.44 Renumber to 90117 and amend.
- § 90.45 Renumber to 90107 and amend.
- § 90.46 Renumber to 90108.
- § 90.47 Renumber to 90109 and amend.
- § 90.47.01 Renumber to 90110 and amend.
- § 90.47.02 Renumber to 90111 and amend.
- § 90.47.03 Renumber to 90113 and amend.
- § 90.47.04 Repeal. According to DOC, Transfer Review Committee has never met.
- § 90.47.05 Repeal.
- § 90.48 Renumber to 90105(d) and amend.
- § 90.49 Renumber to 90114 and amend

Discussion:

Regarding 90.16, Atty Sean Brown asked if input from DOC was received regarding the POST requirements for DOC guards, and whether they might lose too many guards if required to comply. Acting Chair responded that the suggested amendment was from DOC. She noted that as part of the POST Commission requirements, each agency submitted its own Physical Fitness Qualifications Test (PFQT), and further, that deferring to POST requirements makes sense as it was the standard DOC adopted and already established.

Regarding 90.16.1, Atty Cunliffe suggested the language “subject to appropriation” should be “subject to availability of funds.” Acting Chair Cepeda agreed with the recommendation.

Regarding 90.20 and 90.47.04, and the two administrative bodies that were deleted, Acting Chair Cepeda reported these bodies were not referenced in any other part of the GCA.

- **Article 2 – Western Interstate Corrections Compact**

- § 90.50 Renumber to 90201.
- § 90.51 Renumber to 90202 and amend.
- § 90.52 Renumber to 90203.
- § 90.54 Renumber to 90204 and amend.
- § 90.56 Renumber to 90205.
- § 90.58 Renumber to 90206.
- § 90.60 Renumber to 90207.
- § 90.62 Renumber to 90208.
- § 90.64 Renumber to 90209.
- § 90.66 Renumber to 90210.
-

- **Article 3 – Interstate Compact on Juveniles**

- § 90.80 Repeal – Move to Title 19, Chapter 20 DYA, as a new article.
- § 90.82 Repeal – Move to Title 19, Chapter 20 DYA, as a new article.
- § 90.84 Repeal – Move to Title 19, Chapter 20 DYA, as a new article.

Discussion:

Regarding Article 3, Acting Chair Cepeda reported that the subcommission decided it is in the wrong place and suggested moving it to Title 19, Chapter 20 DYA and there is a newer Interstate Compact on Juveniles that the Legislature should consider.

- **Article 4 Prison Industries**

- § 90.90 Renumber to 90401 and amend.
- § 90.91 Renumber to 90402 and amend.

Discussion:

Regarding 90.90, the subcommission recommends removal of the earnings formula. There is a specific earnings formula in subsection (c). Suggest a new language to remove reference to that and rely on section (a). There are constraints on the uses of the fund. This could be addressed through rules and regulations.

- **Article 5 – Transfer Pursuant to Treaty**

- § 90.100 (Untitled Section) Renumber to § 90113.
-

- **Article 6 – Civilian Corrections Reserve Program**

- § 90.201 Renumber to 90601.
- § 90.202 Renumber to 90602.

- § 90.203 Renumber to 90603.
- § 90.204 Renumber to 90604.
- § 90.205 Renumber to 90605.
- § 90.206 Renumber to 90606.
- § 90.207 Renumber to 90607.
- § 90.208 Renumber to 90608.
- § 90.209 Renumber to 90609.
- **Article 7 – Department of Corrections Modernization Act of 2021 §§ 90.301-90.314**
 - § 90.301 Renumber to 90701 with amendments.
 - § 90.302 Renumber to 90702.
 - § 90.302 Renumber to 90703.
 - § 90.303 Renumber to 90704.
 - § 90.305 Renumber to 90705.
 - § 90.306 Renumber to 90706.
 - § 90.307 Renumber to 90707.
 - § 90.308 Renumber to 90708.
 - § 90.309 Renumber to 90709.
 - § 90.310 Renumber to 90710.
 - § 90.311 Renumber to 90711.
 - § 90.312 Renumber to 90712.
 - § 90.313 Renumber to 90713.
 - § 90.314 Renumber to 90714.

Discussion:

Regarding § 90.301, the subcommission recommended amendments. However, the Plenary Commission did not approve of the recommendation.

Chairman Quan called for the vote on the recommendations as follows:

Article 1

- | | |
|-----------|---|
| § 90.10 | Amend |
| § 90.15 | Amend |
| § 90.16 | Amend |
| § 90.16.1 | Amend with “subject to availability of funds” |
| § 90.20 | Repeal |
| § 90.25 | Amend |
| § 90.27 | Amend |
| § 90.30 | Amend |
| § 90.35 | Amend |
| § 90.40 | Amend |
| § 90.41 | Amend |
| § 90.42 | Amend |
| § 90.43 | Amend |
| § 90.44 | Amend |

§ 90.45	No Change
§ 90.46	No Change
§ 90.47	No Change
§ 90.47.01	No Change
§ 90.47.02	No Change
§ 90.47.03	Amend
§ 90.47.05	Repeal
§ 90.47.04	Repeal
§ 90.48	Amend
§ 90.49	Amend

With no objection, these recommendations for Article 1 were moved to the final reading file.

Article 2

§ 90.50	No Change
§ 90.51	Amend
§ 90.52	No Change
§ 90.54	No Change
§ 90.56	No Change
§ 90.58	No Change
§ 90.60	No Change
§ 90.62	No Change
§ 90.64	Amend
§ 90.66	Amend

Article 3

§ 90.80	Repeal
§ 90.82	Repeal
§ 90.84	Repeal

Article 4

§ 90.90	Amend
§ 90.91	Amend

Article 5

§ 90.100	Reenact as § 90113
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Chairman Quan asked for a motion to accept the recommendations to Articles 2, 3, 4 and 5. Atty McDonald so moved, seconded by Atty Tydingco. Without objection these recommendations were moved to the final reading file.

Article 6

§ 90.201	No Change
§ 90.202	No Change
§ 90.203	No Change
§ 90.204	No Change
§ 90.205	No Change
§ 90.206	No Change
§ 90.207	No Change
§ 90.208	No Change
§ 90.209	No Change

Chairman Quan summarized the recommendations to Article 6 as no change other than renumbering and requested a motion to approve. Atty Cunliffe so moved, seconded by Atty Tydingco. Without objection the recommendations were moved to the final reading file.

Article 7

§ 90.301	No Change. Recommendation to amend not approved.
§ 90.302	No Change
§ 90.304	No Change
§ 90.305	No Change
§ 90.306	No Change
§ 90.307	No Change
§ 90.308	No Change
§ 90.309	No change
§ 90.310	No change
§ 90.311	No Change
§ 90.312	No Change
§ 90.313	No Change
§ 90.314	No Change

Chairman Quan summarized the recommendations for Article 7 as no change other than renumbering. Regarding 90.301, the Chairman stated the plenary body suggested no change as opposed to amend and asked for a motion. Atty Cunliffe so moved, seconded by Acting DOC Director Bordallo. Without objection these recommendations were moved to the final reading file.

B. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommittee on Crimes Against Persons for Discussion and Approval

Subcommittee Chair, Atty McDonald, outlined proposed revisions in a PowerPoint presentation (Attachment hereto) and the Subcommittee's recommendations:

- Chapter 16 Criminal Homicide

- § 16.10 No Change – Definitions Applicable to Chapter
- § 16.20 No Change – Criminal Homicide Defined
- § 16.30 Amend - Aggravated Murder Defined.
- § 16.40 Amend – Murder Defined
- § 16.50 Amend – Manslaughter Defined and Classified
- § 16.60 No Change – Negligent Homicide Defined and Classified

Discussion:

Regarding 16.30, 16.40 and 16.50, Atty McDonald pointed out issues and inconsistencies in amendments to these sections by P.L. 24-282 in 1998. Recommended amendments intended to fix these issues.

Regarding 16.30, Atty Brennan clarified that (b) is unchanged.

Regarding 16.40, Chairman Quan clarified that (b) is unchanged.

Regarding 16.50 Option 1 recommended amendments, Atty Cunliffe raised a concern on removing the parenthetical language from (a)(2) and moving it to a new (b). The Commission agreed to remove the parenthesis mark and keep the language in (a)(2). Chairman Quan read back 16.50 with the agreed upon recommended amendments as follows:

§16.50. Manslaughter Defined and Classified.

(a) Criminal homicide constitutes manslaughter when:

- (1) it is committed recklessly; or
- (2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence; or
- (3) death is indirectly or proximately caused such as an accident by the illegal use of a Schedule I or Schedule II Controlled Substance as defined by chapter 67 of this title, to a person under the influence of such controlled substance; or
- (4) death of a person who is eighteen (18) years or older results from a knowing or willing transfer or sale of a Schedule I or Schedule II Controlled substance, where such control substance approximately causes the death of such person.

(b) Manslaughter is a felony of the first degree.

Chairman Quan called for a vote on the recommendations. So moved by Atty Tydingco, seconded by Acting DOC Director Bordallo. Without objection the recommendations were moved to the final reading file.

Chairman Quan summarized the recommendations for Chapter 16 as follows:

- § 16.10 No Change
- § 16.20 No Change
- § 16.30 Amend and move to the second reading file
- § 16.40 Amend and move to the second reading file
- § 16.50 Amend and move to the second reading file
- § 16.60 No Change

Atty McDonald confirmed these recommendations.

C. Notice of Next Meeting: Thursday, December 07, 2023, Noon (Tentative)

Chairman Quan noted the next plenary meeting will be scheduled for Thursday, December 7, 2023 at 12 noon.

VII. Communications

None.

VIII. Public Comments

None.

IX. Adjournment


Chairman Quan adjourned the meeting without objection.

Respectfully submitted this 29th day of February, 2024.



Andrew S. Quenga, Executive Director

As set out above, the minutes of the October 05, 2023 meeting were approved by the CLRC at the February 29, 2024 meeting.



Magistrate Judge Jonathan R. Quan, Chairman

Dated: 3/7/24-

**THE GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION PLENARY MEETING
THURSDAY, OCTOBER 5, 2023, AT 12:00 PM**

**GUAM JUDICIAL CENTER, JUDGE JOAQUIN V.E. MANIBUSAN, SR. MEMORIAL COURTROOM,
120 WEST O'BRIEN DRIVE, HAGÁTÑA AND BY VIDEOCONFERENCE**

AGENDA

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES August 31, 2023
- V. OLD BUSINESS
 - A. Membership Update
 - B. Third Quarter Report
 - C. Overview of Approvals of Recommendations of the Subcommissions on Criminal Procedure and Crimes Relating to Property at Plenary Meeting of August 31, 2023
- VI. NEW BUSINESS
 - A. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommittee on Drug & Other Criminal Offenses for Discussion and Approval
 - B. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommittee on Crimes Against Persons for Discussion and Approval
 - C. Notice of next meeting: Thursday, December 7, 2023, Noon (Tentative)
- VII. Communications
- VIII. Public Comment
- IX. Adjournment

**NOTICE OF REGULAR MEETING
OF
THE GUAM BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS,
ARCHITECTS, AND LAND SURVEYORS (PEALS)**

The Guam Board of Professional Engineers, Architects, and Land Surveyors (PEALS) will hold its Regular Meeting on **Thursday, October 5, 2023, at 2:00 p.m.** in the GEDA Conference Room, 5th Floor, ITC Building. The meeting is open to the public and can be viewed live via the Open Government of Guam Link as follows:

Open Government of Guam: https://go.opengovguam.com/meetings_list/peals

The agenda will include: **1.** CALL TO ORDER; **2.** LAUDATORY Narcisco G. Custodio - CE629; **3.** REVIEW / APPROVAL OF MEETING MINUTES a. July 27, 2023; **4.** EXECUTIVE BOARD ADMINISTRATOR'S REPORT a. Board Activities b. Financial Report; **5.** BOARD INVESTIGATOR'S REPORT a. PB2022-03 Aaron Burger v. Eddy N. Sy, PE, b. PB2023-01 Mark Philip Mafnas Park v. Narcisco G. Custodio, PE, c. PB2023-02 Mateo C. Matanane, RA v. Kilhak Lee Kunimoto, RA, d. PB2023-07 PEALS Board v. Wenefredo E. Gallega, PE, e. PB2023-08 PEALS Board v. Future World Corporation, f. B2023-09 PEALS Board v. Core Tech International Corp.; **6.** OLD BUSINESS Law, Rules, and Regulations Review Continued; **7.** NEW BUSINESS; **8.** BOARD DISCUSSION; a. PLS Application Perry, Paul b. COA Application CatCon **9.** PUBLIC COMMENT; **10.** DPW PERMIT & DLM MAP REVIEW; **11.** ADJOURNMENT

**** Individuals with disabilities or requiring special accommodations are asked to contact Marie N. Villanueva at 671-646-3113. Publication of notice of this meeting to the public is paid for by government funds from the Guam Board of Registration for Professional Engineers, Architects, and Land Surveyors.**

PUBLICATION NOTICE

In accordance with the provisions of Guam Code Annotated, Title XI, Chapter III, Section 3315, notice is hereby given that:

**Li, Yang
DBA:TAU BAY PHO 2**

has applied for a Class: Four (4) On Sale Beer Alcoholic Beverage License said premises being marked as Lot: 5047-1-2-NEW R8 1088 Micronesia Mall Deddedo

little type

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**IN THE SUPERIOR COURT OF GUAM
IN THE MATTER OF THE ESTATES
ALBERT ANTHONY BLAS LIMTIACO,
Deceased.**

SUPERIOR COURT CASE NO. PRO090-23

NOTICE OF HEARING

THIS NOTICE IS REQUIRED BY LAW. YOU ARE NOT REQUIRED TO APPEAR IN COURT UNLESS YOU DESIRE.

1. NOTICE IS HEREBY GIVEN that **William B. Limtiaco** has filed a **Petition for Letters of Administration**, reference to such petition is hereby made for further particulars.
2. A hearing on the Petition will be heard by online remote appearance on **Wednesday, October 11, 2023 at 9:30 a.m.** before the Honorable Dana A. Gutierrez in the Superior Court of Guam.
3. You may appear in person at the Courtroom of Judge Dana A. Gutierrez, 120 W. O'Brien Drive, Hagatna, GU or you may participate via Zoom by logging onto <https://guamcourts-org.zoom.us> and enter the Meeting ID: **839 7874 0380** and Passcode: **189701**. For technical assistance, please call (671) 475-3207 five (5) minutes prior the designated hearing time.

Dated: August 16, 2023

SOPHIA SANTOS DIAZ
Clerk of Court, Superior Court of Guam
By: **/s/ Pauline I. Untalan**
Courtroom/Chamber Clerk

NOTICE OF PUBLIC MEETING

The Guam Criminal Law and Procedure Review Commission will conduct a plenary meeting on **Thursday, October 5, 2023, at 12:00 pm** in the Guam Judicial Center, Judge Joaquin V.E. Manibusan, Sr. Memorial Courtroom, 120 West O'Brien Drive, Hagatna, and by videoconference.

A monitor will be set up for any member of the public who would like to observe and offer comments.

The meeting will be streamed live on the Judiciary of Guam YouTube channel: <https://www.youtube.com/channel/UCfnFCWllp99fAeh9zi4O4g/featured>

AGENDA

- I. CALL TO ORDER
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 - A. Membership Update
 - B. Third Quarter Report
 - C. Overview of Approvals of Recommendations of the Subcommissions on Criminal Procedure and Crimes Relating to Property at Plenary Meeting of August 31, 2023
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 - B. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommission on Crimes Against Persons for Discussion and Approval
 - C. Notice of next meeting: Thursday, December 7, 2023, Noon (Tentative)
- VII. COMMUNICATIONS
- VIII. PUBLIC COMMENT
- IX. ADJOURNMENT

Any person(s) needing special accommodations, auxiliary aids, or services, please contact the Executive Director Andrew Quenga at 671-475-3278. This ad was paid for with Government of Guam funds.
Magistrate Judge Jonathan R. Quan, Chairman

**Proposed Issuance of Underground Injection Control System
Operating Permits for DKS Warehouse**

PUBLIC REVIEW AND COMMENT PERIOD: SEPTEMBER 29, 2023 - OCTOBER 30, 2023

The Guam Environmental Protection Agency (Guam EPA) runs the Underground Injection Control (UIC) Program, as mandated by the Safe Drinking Water Act, and approved by U.S. EPA.

The Agency regulates all applicable activities as set forth in the Guam's UIC Regulations. The UIC Program requires operating permits for all existing injection wells/ systems. This includes wells built prior to the approval of the regulations are still in operation, and wells/ systems constructed after the effective date of the regulations.

Guam EPA has received renewal applications from DKS Warehouse (formerly Bello Warehouse) for five systems located at Bello Road, Barrigada. The facility is an office/warehouse with a subsurface drainage systems at parking areas.

On the basis of a preliminary UIC requirement review, the Administrator has proposed issuing UIC permits to allow discharges of stormwater runoff into the injection systems.

The discharges contain stormwater runoff only. No industrial discharges or any discharges is allowed into the systems.

The permits for these applications will require:

1. Only stormwater runoff to be discharged into the injection systems
2. Semi-annual monitoring of water quality for MBAS, Oil and Grease, NO3-N, Endrin, Lindane, Toxaphene, 2, 4-D, 2, 4, 5-TP Silvex, Heptachlor, Methoxychlor, Lead, Benzene, Ethylbenzene, Xylene, Toluene, MTBE, Boron, COD, and pH;
3. Assurance regarding repairs, replacement, or abandonment of the wells/systems in the event of failure;
4. A laboratory analysis report of runoff water taken from the designated sampling point of the system; and
5. Compliance with other UIC requirements.

A copy of the Draft Permits and Permit Applications for the above applicant and all other supporting documents are available for public inspection from 8 a.m. until 5 p.m. Monday through Friday at the Water Resources Management Program Section of the Water Division, Guam Environmental Protection Agency, located at 17-3304 Mariner Avenue, Tiyan, Barrigada 96913.

For more information, contact Ms. Susan Marquez, at (671) 300-4778 or at (671) 300-4751.

Written comment on the draft permits may be hand delivered or mailed to the address below. Comments must be received by Guam EPA no later than 5 p.m., Monday, October 30, 2023. No fax submittals will be accepted.

Administrator
Guam Environmental Protection Agency
17-3304 Mariner Avenue, Tiyan
Barrigada, Guam 96913

If there are no appeals, the Draft Permits become final. Operation of the injection systems identified by the applicant may proceed subject to the conditions of the permits and other applicable legal requirements.

The final decision to set conditions and issue the final permits or deny applications for the permits will be decided after all comments have been considered. If no comments are received within the 30-day waiting period, the final permits shall be issued immediately after the commenting period closes.

Please bring this information to the attention of all persons who may be interested in this matter.



/s/ **MICHELLE C.R. LASTIMOZA - Administrator**





IN CELEBRATION OF HIS NEW LIFE

Alfred Bamba Toves

Alfred "Al" Bamba Toves
Familian Bajesta

Of Barrigada passed away Sept. 21st, 2023 at the age of 74

Al is predeceased by his:

Parents: Nicolas C. and Maria B. Toves
 Parents In-law: Tomas A. (Familian Adu) and Soledad M. Fejerang (Familian Bejong/ Chencha)
 Brothers/ Sisters and In-Law: Concepcion T. and Bill Jonow, Edward B. and Lolita K. Toves, Rosalia T. and Jose Indalecio, Frank B. Toves, Vicente T. Santos, Florence T. and Robert Leon Guertero, Joseph Fejerang, David Meno, Tomas Maisea Fejerang Jr. II and Frank Talingfong.

Al's love and memories will be forever cherished by his:

Wife: Arlene Meno Fejerang Toves
 Children/Grandchildren/ Great Grandchildren: Marvin Tiel Toves, Annette T. and Jesse Krisotoma Gago III (Sandra Jana Obina and Brandon Naputi Salas | Minaase, Liam Colin Vera and Vince Dlinger and children, Amy Vegetria, Eugenia Fejerang and Jason Pangellinao and children, Eugenio Vegetria Jr. II and Elisha Leon Guerrero and son.
 Brothers/ Sisters and In-law: Juan B. and Rose (Chai) Toves, Josefina (Doring) T Santos, David B. Toves and Margarita T. Cruz, Priscilla F. Taitinloog, Rose F. and Manuel Ullea, Margarita F. and Benny Santiago, Teresita F. and Frankie Smith, Mary and Lloyd Dickie, Thomas and Eileen Meno, Frankie and Patti Meno, Arthur and Jacinta Meno, Elaine, Matilyn, Darlene, Dorzen, Jolene, Thomas I Fejerang, Charlene, Jean, Christine, Jocelyn, Thomas III Fejerang Thomas IV Fejerang

He is additionally survived by numerous nephew's, niece's relatives and friends

Viewing and last respects may be paid Tuesday, Oct. 4th 2023 at Guam Memorial Funeral Home Chapel in Leyang, Barrigada from 9:00am - 11:30am. Mass of Christian Burial will be celebrated at noon at San Vicente Ferrer & San Roke Catholic Church, Barrigada. Burial with full military honors will be rendered at Guam Veterans Cemetery, Pitti.



JUDICIAL COUNCIL OF GUAM
 Suite 300 Guam Judicial Center
 120 West O'Brien Drive, Hagåtña, Guam 96910-5174
 Tel: (671) 475-3300 Fax: (671) 475-3140
www.guamcourts.org

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 Magistrate Judge Jonathan R. Quan, Chairman

GUAM WORKFORCE DEVELOPMENT BOARD PUBLIC NOTICE

The Guam Workforce Development Board (GWDB) will be holding an Executive Meeting on Thursday, October 5, 2023 at 4:00pm at the 3rd floor conference room located in the GCIC Building at 414 West Soledad Avenue, Hagåtña, Guam 96910.

Individuals requiring special accommodations should contact the Guam Guam Department of Labor Office at 671-475-7044 or email martha.rubic@dol.guam.gov

This advertisement is paid with government funds by the Guam Department of Labor





Judiciary of Guam

Administrative Office of the Courts
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910
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HON. ROBERT J. TORRES
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA, III
PRESIDING JUDGE

DANIELLE T. ROSETE, ESQ.
ADMINISTRATOR OF THE COURTS

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION (CLRC) FOURTH PLENARY MEETING

Thursday, August 31, 2023

In-person: Honorable Joaquin V.E. Manibusan Sr. Memorial Courtroom, Guam Judicial Center
via Videoconference (Zoom) and via Live-streamed on the Judiciary of Guam YouTube Channel

MINUTES

I. CALL TO ORDER

The Fourth Plenary Meeting of the Guam Criminal Law and Procedure Review Commission (CLRC) on August 31, 2023 was called to order by Chairman Jonathan R. Quan at 12:01 p.m.

II. PROOF OF DUE NOTICE OF MEETING

Due publication of the five-day and 48-hour Notices of Meeting of the Guam Criminal and Procedure Review Commission, as required under the Open Government Law, were published in the Guam Daily Post. Copies of proof of the newspaper notices were included in the meeting packet.

III. DETERMINATION OF QUORUM ROLL CALL

Management Officer Valerie Cruz began the roll call. Members were present as indicated below:

CLRC Members:

Hon. Jonathan R. Quan, Present, Judiciary of Guam

Hon. Anita A. Sukola, Present, (via Zoom)

Atty. William Bucky Brennan, Present, Judiciary of Guam

Acting Director of Corrections Fred Bordallo, Present (Judiciary of Guam)

Chief of Police Stephen Ignacio or Designee, Absent for Roll Call

Atty. Joseph McDonald, Present (Judiciary of Guam)

Atty. Randall Cunliffe, Absent for Roll Call

Mr. Monty McDowell, Absent for Roll Call

Atty. John Morrison, Present (Judiciary of Guam)

Asst. AG Marianne Woloschuk, Present, (via Zoom)

Atty. Michael Phillips, Absent for Roll Call

Ms. Valerie Reyes, Absent for Roll Call

Atty. Christine Tenorio, Absent for Roll Call (Presence via Zoom later recognized by Chairman Quan)

Atty. Phillip Tydingco, Present (Judiciary of Guam)

Ex-Officio, Non-Voting Members:

Executive Director Andrew S. Quenga, Present, (Judiciary of Guam)

Compiler of Laws Geraldine Cepeda, Present, (via Zoom)

This meeting determined a quorum of 8 commission members present. Chairman Quan acknowledged the presence of ex-officio members Hon. Elizabeth Barrett-Anderson and Lenny Rapadas. Chairman Quan indicated that the meeting was taking place in-person at the Hon. Joaquin V.E. Manibusan Sr. Memorial Courtroom, via Zoom and also live-streamed on the Judiciary's YouTube channel.

IV. DISPOSAL OF MINUTES: Approval of April 06, 2023 Third Plenary Meeting

Chairman Quan indicated that the minutes of the third plenary meeting on April 06, 2023 were being presented for approval. Hon. Anita Sukola moved to approve the minutes. Atty. McDonald seconded the motion. With no opposition, the minutes were approved.

Before continuing on to the next agenda item, Chairman Quan welcomed back all the members. He stated that this is the first meeting the CLRC has had since Typhoon Mawar, which caused our third plenary meeting scheduled for June 08, 2023 to be cancelled. He noted that subcommissions have been diligently meeting to the best of their ability since the typhoon.

V. OLD BUSINESS

A. Membership Update

Chairman Quan acknowledged CLRC's newest member, Acting DOC Director Fred Bordallo. He will be serving on the CLRC's Subcommission on Drugs & Other Criminal Offenses (Drugs & Other Criminal Offenses). We are still waiting on the Governor's appointment to replace the Honorable Elizabeth Barrett-Anderson who had to step-down due to her service on the Criminal Injuries Compensation Commission. We also welcome Atty. Lenny Rapadas as a volunteer auxiliary ex-officio member on the Subcommission on Criminal Procedure (CP).

VI. NEW BUSINESS

A. Presentation of Amendment and Repeal Worksheets for Discussion and Approval:

Chairman Quan stated that the Subcommissions presenting at this meeting will provide reports on their review of the statutes, present recommendations for discussion, and if ready, approval by voting members of our Commission.

Chairman Quan presented an Excel spreadsheet in the meeting packet showing the recommendations, amendments, repeals, no changes, of the Criminal Procedure and the Crimes Relating to Property Subcommissions on the chapters that were discussed during their working sessions.

1. Presentation of the Subcommittee on Criminal Procedure

Hon. Anita Sukola introduced members of the Criminal Procedure Subcommittee and indicated that although this subcommittee is primarily responsible for reviewing GCA Title 8, the Criminal Procedure Code, but because P.L. 36-119 prioritized the review of Title 9, the Criminal Correctional Code, Chairman Quan assigned several chapters of Title 9 to this subcommittee. Hon. Sukola turned the review to Executive Director Serge Quenga for further presentation.

Executive Director Quenga presented the subcommittee's recommendations in a PowerPoint presentation, which was made part of the meeting packet distributed to members prior to the meeting and included with these minutes for reference as Attachment 1. Recommended changes are shown in redline format.

Director Quenga summarized the presentation as follows:

- **Title 9 Chapter 71 – The Guam Gun-free School Zone Act of 2004**

- Referral to Crimes Against Persons.
- Recommend the following amendments:
 - § 71.20(c) Correct Typo.
 - § 71.30 Clarify title.
 - § 71.60 Remove unnecessary verbiage.
 - § 71.70 Move this definition of “loaded firearm” to the definitions section §71.20 as a new subsection (d) and consolidate and simplify definition.
 - Discussion:

Hon. Elizabeth Barrett-Anderson questioned the definition of loaded firearm and whether it was taken from a definition elsewhere in the Guam code or another jurisdiction. She stated the definition is a good one. Attorney Brennan questioned why there is a distinction between loaded firearm and firearm.

Attorney McDonald questioned the constitutionality of this Act. Director Quenga stated such acts have been challenged but that the Guam statute is narrowly tailored and definition of school zone was limited to school property. Hon. Elizabeth Barrett-Anderson mentioned that she was the senator who introduced this legislation and that it was narrowed. Chairman Quan noted that no change in language is being recommended, only moving the definition to 71.20.

Hon. Elizabeth Barrett-Anderson noted searches in schools find unloaded firearms in lockers and noted the Legislature may want to include sections on loaded and unloaded firearms. Attorney Tydingco stated the federal definition of loaded firearm is the ability to expel a projectile. Hon. Elizabeth Barrett-Anderson asked if it included BB guns. Executive Director Quenga stated the chapter will be referred to the Crimes Against Persons Subcommittee and he will report back to the Commission on these issues. Chairman Quan said that there is no change to the language,

just a recommendation to move it to the final voting file. Tabled for further discussion.

- § 71.80 Update and remove outdated requirements
- § 71.81 Consolidate § 71.81, § 71.82 & § 71.83

- **Title 9 Chapter 80 – Disposition of Offenders**

- Recommendations:

- Subcommittee is doing a deep dive into this chapter as it contains many procedural provisions. Will work with other subcommittees and specific member agencies in working sessions on review of this chapter and will report back to the Plenary Commission.

- **Title 9 Chapter 81 – Reduction of Sentences**

- Recommendations:

- Refer to Drugs & Other Criminal Offenses. It provides for reduction of sentences by work credit. It could be a good fit in Article 1 of Chapter 80.
- Move Chapter 81 to new § 80.23 of 9 GCA with minor clarifications.
- Move § 81.10 (f) to 9 GCA § 92104(f), with amendments, as it fits better with the Driving While Impaired section of the Safe Streets Act.
- Discussion: Acting DOC Director Fred Bordallo raised the disparity on work credit for work outside the prison as opposed to work inside the prison, which work credit is not given. Attorney Brennan noted the mandatory minimum sentence of a first offender is 48 hours and second offender has a 7-day minimum, how would work credit apply to such offenders? Director Quenga requested any comments be written up for review. Tabled for further discussion.

- **Title 9 Chapter 82 – Loss and Restoration of Rights Incident to Conviction or Imprisonment**

- Recommendations:

- Referral to Drugs & Other Criminal Offenses. Note Compiler note of possible unconstitutionality of § 82.25
- § 82.20 Remove unnecessary language
Discussion: Attorney Morrison raised issue on “sentence of imprisonment.” Questioned whether it includes suspended sentence, probation or parole. Tabled for further discussion.
- § 82.25(d) Correct typo

- **Title 9 Chapter 84 – Rehabilitative and Development Program**

- Recommendations:

- Referral to Drugs & Other Criminal Offenses
- §84.15 (b) Remove unnecessary language and change the word “client” to “inmate”
- Discussion: Hon. Elizabeth Barrett-Anderson noted this should be placed with Corrections, might be absorbed by DOCO. Chairman Quan commented that the referring subcommittee will send a letter to the subcommittee being referred. Have until the next plenary meeting to do this.
- § 84.20 Remove long past deadlines in (a).

- § 84.02 should be § 84.15
- **Title 9 Chapter 85 – Guam Parole Board**
 - Recommendations:
 - Referral to Drugs & Other Criminal Offenses. Any change to inmate compensation should be requested by Parole.
 - § 85.72 Clarify language.
 - Discussion: Attorney Tydingco asked if “prisoner” should be changed to “inmate.” Hon. Barrett-Anderson commented that the definition of prisoner is everywhere in the code and is defined as “inmate or detainee” although they wanted to get rid of the word prisoner. Suggestion made to use “parolee.” Director Quenga stated we’ll consider this along with Drugs & Other Criminal Offenses. Chairman Quan stated that the definition is by statute.
- **Title 9 Chapter 86 – Compensation for Damages from Criminal Activities**
 - Recommendations:
 - Amended and renumbered by P.L. 27-138:4 to 8 GCA Chapter 161. Reference to Chapter 86 was kept in Title 9 to advise readers of its renumbering to 8 GCA Chapter 161. Deferred removal of this reference to Chapter 86 to the Compiler of Laws. 8 GCA Chapter 161 will be referred to Hon. Elizabeth Barrett-Anderson and the Criminal Injuries Compensation Commission.
- **Title 9 Chapter 87 – Victim Notification**
 - Recommendations:
 - Repealed by P.L. 27-138:3, which was enacted as 8 GCA Chapter 160. Reference to Chapter 87 was kept in Title 9 to advise readers of the repeal by P.L. 27-138. Deferred removal of this reference to Chapter 87 to the Compiler of Laws.
- **Title 9 Chapter 88 – Criminal Justice Substance Abuse Act**
 - Recommendations:
 - Refer to the Drugs & Other Criminal Offenses, Prosecution, Probation, Guam Behavioral Health and Wellness Center.
 - § 88.60, Repeal due to a reporting requirement that has long since passed.
 - Will discuss at working sessions for due process issues on § 88.40(b). Will report back to Plenary Commission on this.
- **Title 9 Chapter 89 – Crimes Against Minors and Sex Offenders Registry**
 - Recommendations:
 - Refer to Crimes Against Persons and Drugs & Other Criminal Offenses. Suggest asking input and comment from Probation, the Judiciary and AG Prosecution. Will report back to Plenary Commission.
- **Title 9 Chapter 93 – Criminal Sexual Conduct Assessment and Rehabilitation Act**
 - Recommendations:
 - Referral to Crimes Against Persons & Drugs & Other Criminal Offenses, Probation and Guam Behavior Health and Wellness Center. Will discuss at working sessions whether § 93.30 might raise due process issues for those found not indigent but unable to afford assessment/treatment options available to them. Will report back to Commission on this.
 - § 93.30(c) Repeal unnecessary and repetitive language which is already stated in 93.30(a) and (b).

Director Quenga reported that this completes the Subcommittee on Criminal Procedure's presentation and we will report back to the Commission on issues raised.

Chairman Quan summarized the recommendations as follows:

Note: NC = No Change; Tabled = Further Discussions.

Chapter 71 The Guam Gun-Free School Zone Act of 2004

§ 71.10 NC

§ 71.20 Amend – Tabled

§ 71.30 Amend

§ 71.40 NC

§ 71.50 NC

§ 71.60 Amend

§ 71.61 Amend

§ 71.70 Amend

§ 71.80 Amend

§ 71.81 Amend

§ 71.82 Amend

§ 71.83 Amend

§ 71.90 NC

Chapter 81 Reduction of Sentences

§ 81.10 Repeal & Re-enact as 80.23 – Tabled

Chapter 82 Loss and Restoration of Rights Incident to Conviction or Imprisonment

§ 82.10 NC

§ 82.15 Amend

§ 82.20 Amend – Tabled

§ 82.25 NC

Chapter 84 Rehabilitative and Development Program

§ 84.10 NC

§ 84.15 Amend

§ 84.20 Amend

§ 84.25 NC

§ 84.30 NC

§ 84.35 NC

§ 84.49 NC

Chapter 85 Guam Parole Board

§ 85.10 NC

§ 85.14 NC

§ 85.18 NC

§ 85.22 NC

§ 85.26 NC

§ 85.30 NC

- § 85.34 NC
- § 85.38 NC
- § 85.50 NC
- § 85.54 NC
- § 85.58 NC
- § 85.61 NC
- § 85.62 NC
- § 85.68 NC
- § 85.72 Amend

Chairman Quan: Other than those subsections tabled at request of members – 71.20, 81.10, 84.20, is there a motion to accept recommendations and move to the final reading file which will be addressed in the last two months? Atty. Brennan asked if there was any interest in putting these actions with a list and taking a vote at the next meeting? He commented that he was able to review what was given in the packet but didn't know if he looked at everything. Hon. Elizabeth Barrett-Anderson mentioned that the chapters were referred to Drugs & Other Criminal Offenses and members will be put on list to participate in discussions.

Attorney McDonald asked if voting was placed on agenda and newspaper notice. Chairman Quan stated voting was placed on the agenda. Director Quenga stated the agenda and notice published in the newspaper are the same.

MOTION by Atty. Tydingco to move the recommendations and amendments of the chapters reviewed to the reading file, including the ones for no change and for repeal, except for the three subsections (71.20, 81.10 & 84.20) which were tabled. **MOTION SECONDED** by Atty. Joseph McDonald. With no objections, the motion passed.

2. Presentation of the Subcommittee on Crimes Relating to Property Subcommittee

Attorney Tydingco presented the subcommittee's recommendations in a PowerPoint presentation, which was made part of the meeting packet distributed to members prior to the meeting and included with these minutes for reference as Attachment 2.

Attorney Tydingco summarized the presentation as follows:

Chapters Reviewed: Chapter 32, 34, 37, 40, 43, 46, 47 and 48

Chapters Remaining: Chapter 4, 13, 49, 69 and 70

- **Chapter 43 – Theft and Related Offenses**
 - Recommendations:
 - Amend offense grading values for thefts to increase as shown in table.
 - Discussion: Chairman Quan noted recommended change to 2nd degree felony should be equal to or greater than \$5000. Attorney Tydingco stated the increases are not empirical. Attorney McDonald asked if a survey of states was done.

Attorney Tydingco stated the increases here are arbitrary and meant to spur discussion. Amendments to offense grading values tabled for further discussion.

- § 43.31(a)(3) Delete the crime against community special allegation to address vagueness and ambiguity.

Discussion: Attorney McDonald asked if this section has been struck as it still exists in New Jersey (402 N.J Super. 177). Attorney Tydingco stated the language is vague and ambiguous in their view. Tabled for further discussion.

- **Chapter 37 Burglary**

- Recommendations:

- § 37.20 Amend to include GCA citation.
- § 37.40 Repeal section. Language duplicative and already covered in § 37.20.

Discussion: Atty Tenorio agreed that it should be removed.

- § 37.20 Amend to add affirmative defense to Burglary.

Discussion: Attorney Rapadas asked why “school” is included in the added language. Attorney Brennan it is the same language.

- **Chapter 34 Arson, Negligent Burning, Criminal Mischief**

- Recommendations:

- § 34.60(a) Delete to clarify punishment is based on offense grading value only.
- § 34.60(b) Amend to increase offense grading value for Criminal Mischief as shown in table.

Discussion: Attorney McDonald suggested a survey of states. Attorney Tydingco suggested tabling to include more empirical information. Attorney Tenorio commented the amounts do not matter for charging criminal mischief. Amendments to offense grading values tabled for further discussion.

- § 34.60(c) Delete mandatory minimum which includes mandatory minimum 48 hours jail time and fines for first, second, and third offenses, separate from general sentencing structure. Remainder of subsection (c) related to joint and several liability for parents of offending minors to remain.
- § 34.70(a)(3) Amend to include Department of Land Management in definition of owner.
- § 34.70(i) Amend punishment for consistency with general punishment for misdemeanor crimes.

- **Chapter 46 Forgery, Fraudulent Practices & Telephone Records**

- Recommendations:

- § 46.90 - \$46.94. Recommend repeal.

Discussion: Attorney Tydingco stated he doesn’t recall this statute being charged and does not understand how this statute works. Tabled for further discussion.

- § 46.30. Amend to increase offense grading values for dishonored checks as shown in table. Suggested increases not empirical.

Discussion: Attorney Tenorio suggested amount for petty misdemeanor may be too low and provided example of a mom and pop store. Attorney Tydingco stated the increases are not empirical. Chairman Quan suggests tabling for further review. Amendments to offense grading values tabled for further discussion.

- § 46.50. Recommend repeal.

Discussion: Attorney Tydingco stated this seems related to greyhound or pari-mutuel racing which have been out for a while and not applicable anymore in our community.

- § 46.35(a) Amend to address use of credit information without using physical credit card – Asked to table to get update.
Discussion: Attorney McDonald suggested adding payment card, debit card. Attorney Tenorio agreed with adding debit cards. Tabled for further discussion.
- § 46.35(d) Amend to increase offense grading values for Fraudulent Use of Credit Card as shown in table.
Discussion: Attorney Tydingco stated looking also at other store value cards, gift cards.
- § 46.80(c) Amend to increase offense grading values for Impersonation and Identify Theft Crimes. Tabled for further discussion.
- § 46.103 Amend to increase offense grading values for Mortgage Fraud. Tabled for further discussion.
- § 46.104. Repeal “Mortgage Fraud Prosecutor and Investigators.”
Discussion: Attorney Tydingco stated AG has discretion and authority to hire prosecutors and investigators, without specific need for “mortgage fraud prosecutor and investigators.
- § 46.504(a). Amend and strike-out duplicative language.
- § 46.504(b). Amend and strike-out duplicative language.
- § 46.504(c). Amend and strike-out duplicative language.
- §46.504(d). Amend and strike-out duplicative language.
- §46.504(e). Amend and strike-out duplicative language.
- § 46.504(f). Amend and strike-out duplicative language.
- § 46.504(g). Amend misdemeanor to felony.
- **Chapter 32 Financial Exploitation of Elderly and Individuals with Disabilities**
 - Recommendations:
 - Repeal of entire Chapter. Vulnerable victim sentencing enhancement and theft statute provide sufficient criminal prohibition; conflicting mens rea language throughout statute.
Discussion: Attorney Tenorio noted this chapter is recent – from 2019 and suggests looking into legislative intent. She agreed that mens rea is inconsistent. Chairman Quan asked if she agreed that this is covered by the vulnerable victim statute. Attorney Tenorio did not agree as vulnerable victim covers second degree theft and third degree robbery. Amounts will not cover. Tabled for further Discussion.
- **Chapter 48 (Notification of Breaches of Personal Information)**
 - Recommendations:
 - No change but remove from criminal code and move to civil statute. Tabled for further discussion.
- **Chapter 47 Trademark Counterfeiting Act** – no proposed amendments
- **Chapter 40 Robbery** – no proposed amendments

Attorney Tydingco reported that this completes the presentation of the Subcommittee on Crimes Relating to Property.

Chairman Quan summarized the recommendations as follows:

Note: NC= No Change; Table = Further Discussions.

Chapter 43: Theft & Related Offenses

43.10 NC

43.15 NC

43.20 NC

43.21 NC

43.25 NC

43.30 NC

43.31 Amend – Tabled

43.35 NC

43.40 NC

43.45 NC

43.50 NC

43.51 NC

43.55 NC

43.56 NC

43.60 NC

43.65 NC

43.70 NC

43.75 NC

Chapter 46 Forgery, Fraudulent Practices and Telephone Records

46.10 NC

46.15 NC

46.20 NC

46.30 Amend – Tabled

46.35 Amend – Tabled

46.40 NC

46.45 NC

46.50 Repeal

46.55 NC

46.60 NC

46.65 NC

46.70 NC

46.75 NC

46.80 Amend – Tabled

46.90 Repeal – Tabled

46.91 Repeal - Tabled

46.92 Repeal – Tabled

46.93 Repeal- Tabled

46.94 Repeal - Tabled

46.100 NC

46.101 NC
46.102 NC
46.103 Amend - Tabled
46.104 Repeal
46.401 NC
46.402 NC
46.403 NC
46.404 NC
46.405 NC
46.406 NC
46.407 NC
46.408 NC
46.501 NC
46.502 NC
46.503 NC
46.504 Amend
46.505 NC
46.506 NC
46.507 NC
46.508 NC
46.601 NC
46.602 NC
46.603 NC
46.604 NC
46.605 NC
46.606 NC
46.607 NC
46.608 NC

Chapter 37: Burglary and Home Invasion

37.10 NC
37.20 Amend
37.30 NC
37.40 Repeal
37.210 NC
37.220 NC
37.230 NC
37.240 NC
37.310 NC
37.330 NC
37.340 NC
37.350 NC
37.360 NC

Chapter 34: Arson, Negligent Burning Criminal Mischief

34.10 NC

34.20 NC

34.30 NC

34.40 NC

34.50 NC

34.60 Amend

34.70 Amend

34.80 NC

34.90 NC

Chapter 32: Financial Exploitation of the Elderly and Individuals with Disabilities

32.10 Repeal - Tabled

32.20 Repeal - Tabled

32.30 Repeal - Tabled

32.40 Repeal - Tabled

32.50 Repeal – Tabled

Chapter 48 Amend - Tabled

Chapter 47 NC

Chapter 40 NC

Chairman Quan requested a motion to accept the recommendations and move to the final reading file.

Attorney McDonald made a **MOTION** to accept the recommendations. **MOTION SECONDED** by Hon. Anita Sukola. With no opposition, the motion passed.

Hon. Barrett-Anderson requested that the CLRC Chairman make a request to the Governor to fill the vacancy on the Drugs & Other Criminal Offenses Subcommittee and mentioned a member who has not shown up at meetings and should be replaced as Drugs & Other Criminal Offenses will receive many referrals.

Chairman Quan stated we will send a formal letter.

B. Reminder – Subcommittee Third Quarter Status Reports Due Friday, September 15, 2023. Third Quarter ends September 30, 2023.

Chairman Quan announced Third Quarter end date and status reports due date.

C. Notice of next meeting: Thursday, October 05, 2023, Noon (Tentative) at the Joaquin V.E. Manibusan Sr. Memorial Courtroom, Judicial Center,

Chairman Quan stated that at the next Plenary Meeting (10/05/23), the Subcommittees on Crimes Against Persons (Crimes Against Persons) and the Drug & Other Criminal Offenses (Drugs & Other Criminal Offenses) will be giving their presentations on their subcommittee's progress. Thank you all.

VII. **Communications**
None.

VIII. **Public Comments**
None.

IX. **Adjournment**

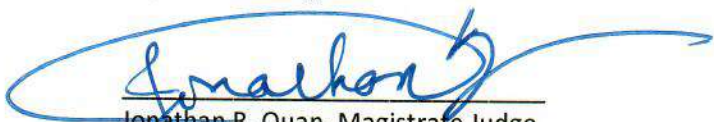
Chairman Quan requested a motion to adjourn. Atty. Phil Tydingco **MOTIONED** to adjourn the meeting, **SECONDED** by Atty. Joseph McDonald. There being no opposition, the Fourth Plenary Meeting of the CLRC was adjourned by Chairman Quan at 1:50 p.m.

Respectfully submitted this 5TH day of October, 2023.



Andrew S. Quenga, Executive Director

As set out above, the minutes of the August 31, 2023 meeting were approved by the CLRC at the October 05, 2023 meeting.



Jonathan R. Quan, Magistrate Judge
Chairman

Dated: 10/5/2023



GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION

Fifth Plenary Meeting
October 5, 2023, 12:00 p.m.



Agenda

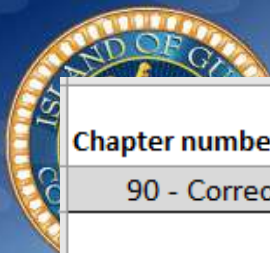
- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES August 31, 2023
- V. OLD BUSINESS
 - A. Membership Update.
 - B. Third Quarter Report
 - C. Overview of Approvals of Recommendations of the Subcommissions on Criminal Procedure and Crimes Relating to Property at Plenary Meeting of August 31, 2023
- VI. NEW BUSINESS
 - A. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommission on Drug & Other Criminal Offenses for Discussion and Approval
 - B. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommission on Crimes Against Persons for Discussion and Approval
 - C. Notice of next meeting: Thursday, December 7, 2023, Noon (Tentative)
- VII. Communications
- VIII. Public Comment
- IX. Adjournment



Report of the Subcommittee on Drugs and Other Criminal Offenses (DOCO)

October 5, 2023 CLRC Plenary Meeting

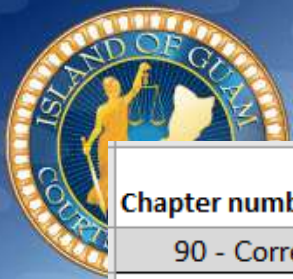
Members: Acting DOC Director Fred Bordallo; Atty. Mike Phillips; Ms. Valerie Reyes; Geraldine A. Cepeda, Compiler of Laws; Hon. Elizabeth Barrett-Anderson, Ex Officio; Kat Siguenza, Esq., Ex Officio



Chapter number, name	Section number	NO CHANGE	AMEND	REPEAL	REPEAL & RE-ENACT
90 - Corrections	Article 1.				
	§ 90.10.		AMEND		
	§ 90.15.		AMEND		
	§ 90.16.		AMEND		
	§ 90.16.1		AMEND		
	§ 90.20.			REPEAL	
	§ 90.25.		AMEND		
	§ 90.27.		AMEND		
	§ 90.30.		AMEND		
	§ 90.35.		AMEND		
	§ 90.40.		AMEND		
	§ 90.41.		AMEND		
	§ 90.42.		AMEND		
	§ 90.43.		AMEND		
	§ 90.44.		AMEND		
	§ 90.45.	NC			
	§ 90.46.	NC			
	§ 90.47.	NC			
	§ 90.47.01.	NC			
	§ 90.47.02.	NC			
	§ 90.47.03.		AMEND		
	§ 90.47.05.			REPEAL	
	§ 90.47.04.			REPEAL	
	§ 90.48.		AMEND		
	§ 90.49.		AMEND		
					ADD as § 90106



Chapter number, name	Section number	NO CHANGE	AMEND	REPEAL	REPEAL & RE-ENACT
90 - Corrections	Article 2.				
	§ 90.50.	NC			
	§ 90.51		AMEND		
	§ 90.52.	NC			
	§ 90.54.	NC			
	§ 90.56.	NC			
	§ 90.58.	NC			
	§ 90.60.	NC			
	§ 90.62.	NC			
	§ 90.64.		AMEND		
	§ 90.66.		AMEND		
90 - Corrections	Article 3.				
	§ 90.80.			REPEAL	
	§ 90.82.			REPEAL	
	§ 90.84.			REPEAL	
90 - Corrections	Article 4.				
	§ 90.90.		AMEND		
	§ 90.91.		AMEND		
90 - Corrections	Article 5.				
	§ 90.100				REENACT as § 90113



Chapter number, name	Section number	<u>NO CHANGE</u>	<u>AMEND</u>	<u>REPEAL</u>	<u>REPEAL & RE-ENACT</u>
90 - Corrections	Article 6.				
	§ 90.201.	NC			
	§ 90.202.	NC			
	§ 90.203.	NC			
	§ 90.204.	NC			
	§ 90.205.	NC			
	§ 90.206.	NC			
	§ 90.207.	NC			
	§ 90.208.	NC			
	§ 90.209.	NC			
90 - Corrections	Article 7.				
	§ 90.301.		AMEND		
	§ 90.302.	NC			
	§ 90.303.	NC			
	§ 90.304.	NC			
	§ 90.305.	NC			
	§ 90.306.	NC			
	§ 90.307.	NC			
	§ 90.308.	NC			
	§ 90.309.	NC			
	§ 90.310.	NC			
	§ 90.311.	NC			
	§ 90.312.	NC			
	§ 90.313.	NC			
	§ 90.314.	NC			



DOCO Subcommittee – Title 9

The following chapters in Title 9 GCA were assigned to the DOCO Subcommittee by CLRC Chairman Magistrate Judge Jonathan Quan:

- Chapter 28: Public Indecency
- Chapter 49: Governmental Bribery, Other Unlawful Influence and Related Offenses
- Chapter 52: Perjury and Offenses Against the Integrity of Official Proceedings
- Chapter 55: Interference with Governmental Operations and Law Enforcement
- Chapter 58: Escape and Related Offenses
- Chapter 61: Riot, Disorderly Conduct and Related Offenses
- Chapter 64: Gambling
- Chapter 67: Guam Uniform Controlled Substances Act
- Chapter 90: Corrections
- Chapter 92: Safe Streets Act of 2018



Provisions in Other GCA Titles

CLRC Chairman Magistrate Judge Jonathan Quan also tasked the DOCO Subcommittee with reviewing various provisions throughout the GCA that reference contain specific/singular references to criminal offenses, including provisions in:

- Title 5 GCA Chapter 53: Care & Protection of Highways
- Title 8 GCA Chapter 8: Election Campaign and Campaign Offenses
- Title 22 GCA Chapter 49: Pawnbrokers and Junk Dealers
- Title 16 GCA Chapter 9: (Vehicles) Penalties
- Title 11 GCA Chapter 70: (Finance & Taxation) General Provisions
- Title 10 GCA Chapter 12: Medical Practices
- Title 16 GCA Chapter 3: General Provisions



DOCO Highlights

- Chapter 90 – Corrections initiated by Subcommittee Chair, Hon. Elizabeth Barrett-Anderson
- Issues arising from DOC consent decree
- Former DOC Director Robert Camacho created an internal DOC Team: Maj. Antone Aguon, Mr. Mark Perez, Parole Director Mike Quinata
- Subcommittee meetings: Feb. 13, Feb. 27, Mar. 13, Aug. 28, 2023
- Challenges faced by the subcommittee



Article 1 - Department of Corrections

§§ 90.10 - 90.44

Section	Recom.	Suggested change
<p>§ 90.10. Definitions. As used in this Chapter:</p> <p>(a) Director means the Director of Corrections.</p> <p>(b) Department means the Department of Corrections.</p>	<p>Amend</p>	<p>§ 90101. Definitions. As used in this Chapter:</p> <p>(a) Director means the Director of Corrections.</p> <p>(b) Department means the Department of Corrections.</p> <p>(c) Detainee means a person temporarily committed to the custody of the Director, including but not limited to commitment due to pretrial status, federal hold, probation violation, or parole violation.</p> <p>(d) Inmate means a person committed to the custody of the Director post-adjudication, after imposition of a sentence to a term of imprisonment.</p> <p>(f) Prisoner means a person committed to the custody of the Director as a detainee or inmate.</p>



§ 90.15

Section	Recom.	Suggested change
<p>§ 90.15. General Duties of Department of Corrections. The Department shall protect the public from the destructive action of law offenders through control and rehabilitation. It shall provide staff services for the judiciary, the Parole Board, probation officers and interested agencies of the Executive Branch.</p>	Amend	<p>§ 90102. Mission Statement To promote public safety through custody and control of criminal offenders while providing a safe and humane environment for their treatment, rehabilitation, and reintegration back into the community as productive citizens.</p>



§ 90.16.

§ 90.16. Minimum Qualifications for Department of Corrections Officers.

(a) Notwithstanding other provisions of law to the contrary, persons appointed as Corrections Officer shall:

- (1) be a resident of Guam and a U.S. citizen;
- (2) be of good health and good moral character;
- (3) be over the age of eighteen (18) years;
- (4) be a high school graduate or equivalent, but the POST Commission may set higher academic qualifications for all applicants as the Commission considers necessary;
- (5) submit to and pass a drug screening test, including, but not limited to, a urinalysis test;
- (6) submit to psychological testing; and
- (7) submit to a polygraph examination.

(b) No person shall be appointed as a Corrections Officer who has not established satisfactory evidence of qualifications by passing a physical examination, which shall include a physical agility test, and written examinations based upon standards relevant to the duties to be performed, which standards shall be established by the Director of Corrections in conjunction with the Department of Administration.

(c) No person shall be appointed as a Corrections Officer who has been convicted in any civilian or military court of a felony, a crime involving moral turpitude, a crime of domestic or family violence, or who has been administratively pardoned of any crime.

(d) No person shall be appointed as a Corrections Officer before a thorough investigation of the applicant's background and moral character is completed.

(e) A Corrections Officer dismissed for cause shall be permanently ineligible for reappointment to any position in the Department. A Corrections Officer who resigns for the sole purpose of negating or averting a pending or anticipated disciplinary action to dismiss the Corrections Officer shall be ineligible for reappointment.

(f) No person shall be appointed as a Corrections Officer who has not established satisfactory evidence of the ability to understand and work with persons with disabilities, including special needs and mental illness. Evidence of such ability shall be by a certificate of completion of the appropriate training as approved by the Department of Integrated Services for Individuals with Disabilities, as a condition for selection prior to appointment as a Corrections Officer. For the purpose of this Section, the term disability(ies), as is defined in the Americans with Disabilities Act, shall mean a physical or mental impairment that substantially limits one (1) or more major life activities of an individual. Incumbent uniformed officers who do not have a certificate of completion of the training as required in this Act shall, within six (6) months following the enactment of this Act, submit to the Department of Administration such certification as required herein. Amend § 90103. Minimum Qualifications for Department of Corrections Officers.

(a) Notwithstanding other provisions of law to the contrary, persons appointed as Corrections Officer shall meet the qualifications for employment as a peace officer as defined by the Peace Officer Standards and Training Commission in 17 GCA § 51104 and applicable rules and regulations.

(b) A Corrections Officer dismissed for cause shall be permanently ineligible for appointment, reappointment, or reemployment to any position in the Department. A Corrections Officer who resigns for the sole purpose of negating or averting a pending or anticipated disciplinary action shall be ineligible for reappointment or reemployment.



Suggested amendment to § 90.16

§ 90103. Minimum Qualifications for Department of Corrections Officers.

(a) Notwithstanding other provisions of law to the contrary, persons appointed as Corrections Officer shall meet **the qualifications for employment as a peace officer as defined by the Peace Officer Standards and Training Commission in 17 GCA § 51104 and applicable rules and regulations.**

(b) A Corrections Officer dismissed for cause shall be permanently ineligible for **appointment, reappointment, or reemployment** to any position in the Department. A Corrections Officer who resigns for the sole purpose of negating or averting a pending or anticipated disciplinary action shall be ineligible for reappointment **or reemployment.**



§ 90.16.1

Section	Recom.	Suggested change
<p>§ 90.16.1. Annual Corrections Officer Recruits Training Cycle.</p> <p>(a) The Department of Corrections shall conduct a corrections officer recruits training cycle for at least twenty (20) candidates per fiscal year.</p> <p>(b) Each year, the Director of the Department of Corrections shall determine the total cost to conduct a recruitment and training cycle pursuant to the requirements set forth in Subsection (a) of this Section and he/she shall transmit this as part of the Department's proposed budget to I Maga'hagan Guahan for inclusion in the Executive Budget request that I Maga'hagan Guahan submits annually to I Liheslaturan Guahan.</p> <p>(c) The Director of the Department of Corrections shall submit a report to I Maga'hagan Guahan and the Speaker of I Liheslaturan Guahan no later than June 30 of each year to present an update on the corrections officer recruits training cycle conducted during that fiscal year pursuant to the requirements set forth in this Section.</p>	Amend	<p>§ 90104. Annual Corrections Officer Recruits Training Cycle. The Department of Corrections shall conduct a corrections officer recruits training cycle for at least twenty (20) candidates per fiscal year, subject to appropriation.</p>



§ 90.20

Section	Recom.	Suggested change
<p>§ 90.20. Corrections Advisory Council Established. There is hereby the established Corrections Advisory Council, composed of the Chairman of the Guam Parole Board, the Chief Judge of the Superior Court, the Administrator of Social Services (Director, Public Health and Social Services) or his designee, the Principal of the Vocational & Technical High School or his representative, the United States Attorney or his representative and, in addition, one (1) representative from the business community and one (1) member of the general public, who shall be appointed by the Governor with the advice and consent of the Legislature. The Director of the Department shall be ex officio secretary of the Council and the Department shall furnish necessary logistic support. The Council shall advice the Director and the Department as to the policies and procedures to carry out the intent and purposes of this Chapter.</p>	Repeal	



§ 90.25

Section	Recom.	Suggested change
<p>§ 90.25. Director to Establish Prisons. The Director shall establish and operate correctional institutions, and other places of confinement, for prisoners serving sentences of imprisonment imposed by the Courts of Guam and other authorized prisoners, and other persons placed in the custody of the Director, pursuant to the laws of Guam.</p>	Amend	<p>§ 90105. General Powers and Duties of Director .</p> <p>(a) The Director shall establish and operate correctional institutions, and other places of confinement, for inmates and detainees.</p>



§ 90.27

Section	Recom.	Suggested change
<p>§ 90.27. Prison May Serve as Overflow Lock-Up.</p> <p>In the event that a court of competent jurisdiction finds that a facility used to detain persons charged with a crime is inadequate, the court may direct the Director to hold such persons in his custody. Such person shall be detained in an area separate and apart from those persons who have been convicted of a crime and are serving sentences of imprisonment.</p>	Amend	<p>§ 90105. General Powers and Duties of Director.</p> <p>...</p> <p>(b) As head of the Department, the Director . . .</p> <p>(4) May, when the need arises, use correctional facilities to serve as overflow; in which case, the Director shall ensure the segregation of detainees from inmates.</p>



§ 90.30

Section	Recom.	Suggested change
<p>§ 90.30. Rules, Regulations & Disciplinary Rules Authorized. The Director subject to the approval of the Governor by Executive Order, is authorized to make rules and regulations for the administration of correctional institutions and other places of confinement, including, but not limited to, necessary disciplinary measures for inmates thereof and for their treatment, care, labor, rehabilitation and reformation.</p>	Amend	<p>§ 90105. General Powers and Duties of Director .</p> <p>...</p> <p>(c) The Director shall have the authority to promulgate, adopt, and amend rules and regulations in accordance with the Administrative Adjudication Law (codified at Chapter 9 of Title 5, Guam Code Annotated) necessary to implement this Chapter and for the administration of the Department.</p>



§ 90.35

Section	Recom.	Suggested change
<p>§ 90.35. Director to Control Organization of DOC; Appoint Staff.</p> <p>(a) The Director may establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and discretion of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.</p> <p>(b) The Director may appoint and rename officers and other employees within the Department in accordance with the provisions of Title 4 of the Guam Code Annotated.</p> <p>(c) The Director may delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.</p>	Amend	<p>§ 90105. General Powers and Duties of Director .</p> <p>...</p> <p>(b) As head of the Department, the Director</p> <p>...</p> <p>(2) May establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and discretion of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.</p> <p>(3) May delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.</p>



§ 90.40

Section	Recom.	Suggested change
<p>§ 90.40. General Duties of Director of Corrections.</p> <p>As head of the Department, the Director:</p> <p>(a) Shall administer the Department.</p> <p>(b) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law.</p> <p>(c) May formulate and adopt rules necessary or proper for the internal administration of the Department, subject to the approval of the Governor.</p>	<p>Amend</p>	<p>§ 90105. General Powers and Duties of Director .</p> <p>...</p> <p>(b) As head of the Department, the Director shall administer the Department, and:</p> <p>(1) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law.</p> <p>...</p> <p>(c) The Director shall have the authority to promulgate, adopt, and amend rules and regulations in accordance with the Administrative Adjudication Law (codified at Chapter 9 of Title 5, Guam Code Annotated) necessary to implement this Chapter and for the administration of the Department.</p>



§ 90.41

Section	Recom.	Suggested change
<p>§ 90.41. Inmate Commissary. Notwithstanding any other provision of law, the Department of Corrections (DOC) is authorized to operate or outsource the operation of an inmate commissary within the confines of DOC. This Section shall exempt DOC from the provisions of 21 GCA § 60112 in order to provide DOC the authority to lease property to an approved vendor to operate the commissary facility without first seeking legislative approval.</p>	Amend	<p>§ 90115. Commissary. The Department is authorized to operate or outsource the operation of a commissary within the confines of DOC. This Section shall exempt DOC from the provisions of 21 GCA § 60112 in order to provide DOC the authority to lease property to an approved vendor to operate the commissary facility without first seeking legislative approval.</p>



§ 90.42

§ 90.42. Operation of Inmate Commissary.

- (a) The Director of DOC may operate, or contract with another person or entity to operate, a commissary for the use of the inmates confined at DOC.
- (b) In accordance with 5 GCA Chapter 5 (Guam Procurement Law), the Department of Corrections is authorized to enter into a contract for the lease of up to three hundred (300) square feet of its property for an inmate commissary. Procurement of said contract shall be done by a DOC staff member who is qualified under 5 GCA § 5141.
- (c) Funds directed as a result of revenue received from the contract under Subsection (b) of this Section shall be subject to an annual audit by the Office of Public Accountability.
- (d) When entering into a contract under Subsection (a) of this Section, the Director or the Director's designee shall consider the following:
- (1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;
 - (2) the menu items offered by the provider and the price of those items;
 - (3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;
 - (4) safety and security procedures to be performed by the provider; and
 - (5) the performance record of the provider, including service availability, reliability, and efficiency.
- (e) The Department of Corrections shall establish policy and procedures for the administration of this Section. Such policy and procedures shall be transmitted to I Liheslaturan Guåhan prior to operation of the inmate commissary.
- (f) The Department of Corrections shall establish rules and regulations for the administration of this Section prior to operation of the inmate commissary.



Suggested amendment to § 90.42

§ 90116. Operation of Commissary.

(a) The Director may operate, or contract with another person or entity to operate, a commissary for the use of the inmates and detainees confined at DOC.

(b) The Director may enter into a contract for the lease of space to accommodate the commissary.

RECOMMENDATIONS:

- Retained entirety of subsection (a), and language authorizing DOC Director to contract for lease.



§ 90.43

Section	Recom.	Suggested change
<p>§ 90.43. Corrections Commissary Fund.</p> <p>(a) There is hereby established a Fund to be known as the Corrections Commissary Fund (CCF), which shall be maintained separate and apart from other funds of the government of Guam. All funds collected by the government of Guam from the operations of a commissary shall be deposited in the CCF; and, interest and investment earnings shall be credited to the assets of the CCF and shall become part of the CCF. Any remaining balance in the CCF at the end of the fiscal year shall be carried over to the next fiscal year.</p> <p>(b) Inmate Improvement. The Director may use up to fifty percent (50%) of the net proceeds of the CCF to develop or enhance inmate welfare; and the other fifty percent (50%) shall be used for rehabilitation programs within the Department of Corrections.</p>	Amend	<p>§ 90116. Operation of Commissary.</p> <p>...</p> <p>(c) Corrections Commissary Fund. There is hereby established a Fund to be known as the Corrections Commissary Fund (CCF), which shall be maintained separate and apart from other funds of the government of Guam. All funds collected by the government of Guam from the operations of a commissary shall be deposited in the CCF; and, interest and investment earnings shall be credited to the assets of the CCF and shall become part of the CCF</p> <p>(d) The Director may use the net proceeds of the CCF for inmate and detainee improvement.</p>



§ 90.44

§ 90.44. Inmate Phone Access Act of 2021.

(a) There is hereby created, within the Department of Corrections, a revolving fund called the “Inmate Phone Access Fund” (Fund), which shall be established by the Department of Administration in accordance with the following provisions:

(1) Notwithstanding any other provision of law, any revenue that is collected by the Government of Guam for telephone services within the Guam Department of Corrections shall be deposited into said Fund.

(2) Any revenue that is deposited into said Fund is to be used to provide no-cost telephonic services for indigent inmates or indigent detainees to contact their legal counsel.

(3) Should revenues deposited into this Fund not be adequate to provide no-cost telephonic services for indigent inmates to contact their legal counsel, the Director of the Department of Corrections and I Maga’hågan Guåhan shall ensure that any indigent inmate or indigent detainee be provided with their constitutional right to consult legal counsel through no-cost telephonic service by any means that the Director or I Maga’hågan Guåhan sees fit.

(4) For the purposes of this Section, “indigent inmates” or “indigent detainees” shall mean those persons charged in a criminal case before the courts of Guam who are determined indigent consistent with 12 GCA § 11104.

(b) Notwithstanding any other provision of law, within thirty (30) days of the enactment of this Section, the Director of the Department of Corrections shall create and implement a policy where indigent inmates shall be allowed to call the Public Defender Service Corporation, the Alternate Public Defender, or their Attorney of Record, at no cost to the indigent inmate. The Director of the Department of Corrections shall submit a report to I Liheslatura upon the creation and implementation of said policy.



Suggested amendment to § 90.44

§ 90117. Phone Access Act of 2021.

(a) There is hereby created, within the Department of Corrections, a revolving fund called the “Inmate Phone Access Fund” (Fund), which shall be established by the Department of Administration in accordance with the following provisions:

(1) Notwithstanding any other provision of law, any revenue that is collected by the Government of Guam for telephone services within the Guam Department of Corrections shall be deposited into said Fund.

(2) Any revenue that is deposited into said Fund is to be used to provide no-cost telephonic services for indigent inmates or indigent detainees to contact their legal counsel.

(3) Should revenues deposited into this Fund not be adequate to provide no-cost telephonic services for indigent inmates and detainees to contact their legal counsel, the Director of the Department of Corrections and I Maga’hågan Guåhan shall ensure that any indigent inmate or indigent detainee be provided with their constitutional right to consult legal counsel through no-cost telephonic service by any means that the Director or I Maga’hågan Guåhan sees fit.

(4) For the purposes of this Section, “indigent inmates” or “indigent detainees” shall mean those persons charged in a criminal case before the courts of Guam who are determined indigent consistent with 12 GCA § 11104.



§ 90.45 [renumber to § 90107]

Section	Recom.	Suggested change
<p>§ 90.45. Authorization to Transfer Prisoners to Federal Correctional Institutions.</p> <p>The Director is authorized to enter into one or more contracts with the Attorney General of the United States pursuant to the authority granted to the Attorney General of the United States by Title 18, United States Code, § 5003, for the custody, care, subsistence, education, treatment and training in one or more Federal correctional institutions, of persons convicted of criminal offenses in the courts of Guam; provided, that any such contract shall provide for the reimbursement of the United States in full for all costs or other expenses incurred by the United States for such custody, care, subsistence, education, treatment and training; and provided further, that the Director shall comply with the relevant provisions of §§ 90.46 through 90.48 inclusive of this Code prior to the physical transfer of any such person to a Federal correctional institution.</p>	No change	§ 90107. Authorization to Transfer Inmates to Federal Correctional Institutions.



§ 90.46 [renumber to § 90108]

§ 90.46. Emergency Transfers of Inmates.

(a) Existence of correctional emergency. The Director may declare a correctional emergency under the following circumstances:

- (1) When the Director determines the existence of conditions which have affected, or in the immediate future will affect, the physical integrity of any correctional institution over which he has jurisdiction or the health or safety of the inmates thereof; and
- (2) The effect of such conditions will, in the Director's opinion, be to render such institution unable to provide secure custody and proper care for the inmates thereof. The term 'conditions' as used hereinabove includes, although it is not limited to fire, earthquake, explosion, typhoon, flood, other acts of God and calamitous events and diseases, but it shall not include riot, insurrection or any other disturbance created by the inmates of such institution.

(b) Procedure for Declaration. Whenever the Director determines the existence of a correctional emergency as defined hereinabove, he shall make and execute a short, plain written statement setting forth the nature of such emergency and the basis for his opinion that such emergency will render such institution unable to provide secure custody and proper care for the inmates thereof. Such statement shall be filed in the permanent records of the Department as soon after its execution as is practicable. Copies of such statement shall be delivered to the Parole Board and to the Office of the Attorney General within five (5) calendar days after its execution by the Director.

(c) Transfer of Inmates. Following the declaration of a correctional emergency as provided for hereinabove, the Director may, without further delay, enter into one or more contracts such as those contemplated by §§ 90.45 of this Code or by Article III of the Western Interstate Corrections Compact (§ 90.52 of this Code), and he may thereafter transfer an inmate or inmates of the correctional institution for which such correctional emergency was declared to another correctional institution without any further administrative proceedings; provided, however, that any transfer of an inmate or inmates under conditions of correctional emergency shall be to a correctional institution within Guam, if such then exists and then has the capability of providing secure custody and proper care to such inmate or inmates, and that no inmate shall be transferred to a correctional institution outside of Guam under conditions of correctional emergency unless no correctional institution then existing within Guam then has the capability of providing secure custody and proper care to such inmate.

(d) Termination of Correctional Emergency. Whenever the Director determines that the conditions which necessitated the declaration of a correctional emergency no longer have the effect of rendering the correctional institution unable to provide secure custody and proper care for the inmates thereof, the Director shall declare the termination of such correctional emergency. Such declaration shall be in writing and executed by the Director and shall be filed and delivered as set forth in Subsection (b) of this Section. Such termination shall be effective immediately upon its execution.

(e) Return of Inmates. Upon the termination of a correctional emergency, all inmates who were transferred under the provisions of Subsection (c) of this Section shall immediately be returned to the correctional institution from which they were transferred, at the Department's expense.



§ 90.47 [renumber to § 90109]

§ 90.47.01 [renumber to § 90110]

Section	Recom.	Suggested change
<p>§ 90.47. Inmate Transfer: Non-Emergency. The Director of Corrections is authorized to transfer an inmate to a correctional institution outside of Guam in non-emergency circumstances.</p>	No change	§ 90109. Non-Emergency Transfers of Inmates.
<p>§ 90.47.01. Same: Disciplinary Transfer. The Director may recommend the transfer of an inmate to an institution outside of Guam for disciplinary reasons in the following circumstances: (a) when an inmate is alleged by an officer, employee or other inmate to have committed a violation of such institution's rules or regulations, which violation might constitute a threat to the order or discipline of the institution or to the physical safety of an officer, employee or any inmate; or (b) when an inmate is subsequently convicted of a violation of § 58.20 or § 58.30 of this Code, or of any violent crime.</p>	No change	§ 90110. Disciplinary Transfers of Inmates.



§ 90.47.02 [renumber to § 90111]

Section	Recom.	Suggested change
<p>§ 90.47.02. Same: Non-disciplinary Transfer. The Director may recommend the transfer of an inmate to an institution outside of Guam for non-disciplinary circumstances under either of the following circumstances:</p> <p>(a) whenever the Director determines that, due to the physical or mental condition of an inmate, the present incarceration lacks adequate facilities for custody, care, subsistence, education, treatment or training of the inmate, and that of the inmate would be better served by transfer to an institution outside of Guam; or</p> <p>(b) whenever the Director determines that due to overcrowding which impacts on the adequacy of the facility to provide for the safe custody, care, subsistence, education, treatment and training of an inmate the interest of the inmate is better served by such transfer to an institution outside Guam.</p>	No change	§ 90111. Non-disciplinary Transfers of Inmates.



§ 90.47.03

Section	Recom.	Suggested change
<p>§ 90.47.03. Same: Procedures for Transfers. Whenever the Director of the Department of Corrections determines that an inmate be recommended for transfer to a correctional institute outside of Guam, the Director shall convene a Transfer Review Committee to review the basis for such recommended transfer. The Director shall promulgate through Executive Order rules and regulations for the establishment of a Transfer Review Committee to include:</p> <p>(a) a minimum of five (5) members to include a DOC case worker, the Attorney General or representative, a correctional officer, an inmate, a member of the clergy;</p> <p>(b) provisions for due notice on a recommended transfer, which shall include timely notice to the inmate and the Attorney General;</p> <p>(c) provisions for hearing, final decision and appeal from a final decision of transfer;</p> <p>(d) provisions for maintaining a record of each hearing.</p>	Amend	<p>§ 90113. Procedures for Transfers of Inmates.</p> <p>Whenever the Director determines that an inmate be recommended for transfer to a correctional institute outside of Guam, the Director shall review the basis for such recommended transfer. The Director shall provide for due notice on a recommended transfer, which shall include timely notice to the inmate and the Attorney General; and for hearing, final decision and appeal from a final decision of transfer. The Director shall maintain a record of each hearing.</p>



§ 90.47.04

Section	Recom.	Suggested change
<p>§ 90.47.04. Same: Basis of Determination.</p> <p>(a) The Transfer Review Committee shall base its determination for transfer upon substantial evidence as presented on the record at hearing, and shall be final. No inmate shall be recommended for transfer while any conviction for which he was incarcerated is on appeal. Any statement made by an inmate during the course of a transfer hearing shall not be admitted in evidence against the inmate in any subsequent criminal action, except for the purpose of impeachment or in a trial for perjury, false swearing or contempt.</p> <p>(b) The Administrative Adjudication Law and the Open Government Law shall not apply to any proceeding or action taken under this Section, nor shall any inmate be represented by counsel in any proceeding held pursuant to this Section.</p>	Repeal	



§ 90.47.05

Section	Recom.	Suggested change
<p>§ 90.47.05.Same: Appeal from Determination.</p> <p>Any inmate whom the Transfer Review Committee has determined is to be transferred under these provisions may appeal such determination to the Superior Court of Guam. The review of the Superior Court shall not be de novo, and shall be limited to a review of the record to determine whether the Transfer Review Committee made its determination based upon a fair and full hearing. A determination may be reversed only upon a showing that the Committee abused its discretion in applying the rules and regulations to the facts which provided the basis for the recommended transfer, and that to allow the decision to stand would result in a miscarriage of justice. Notice of filing an appeal in accordance with this Subsection does not automatically stay an inmates transfer pending appeal.</p>	Repeal	



§ 90.48

Section	Recom.	Suggested change
<p>§ 90.48. Nursing Mothers-Accommodations.</p> <p>(a) The Director of the Department of Corrections must make reasonable efforts to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.</p> <p>(b) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is not a threat to the infant's and the public's safety and welfare.</p>	Amend	<p>§ 90105. General Powers and Duties of Director.</p> <p>...</p> <p>(d) The Director of the Department of Corrections must make reasonable efforts:</p> <p>(1) to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.</p> <p>(2) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is not a threat to the infant's and the public's safety and welfare.</p>



§ 90.49

§ 90.49. Corrections Revolving Fund.

There is hereby created, within the Department of Corrections, a revolving fund called the 'Corrections Revolving Fund', which shall be established by the Department of Administration in accordance with the following provisions:

(a) All funds collected from the U.S. Marshal Service, the U.S. Immigration Service and the U.S. Bureau of Prisons for housing U.S. prisoners and detainees, confinement of military personnel as agreed to in a Memorandum of Agreement between the United States Air Force and the Department of Corrections dated March 5, 2003, employees of the Department of Corrections for meals they purchase at the Department's dining facility, and the sale of hot garbage (pig slop) to private persons, shall be deposited into said Fund.

(1) Funds in the Corrections Revolving Fund may be used to purchase clothing for prisoners and detainees, foodstuffs for the dining facility, galley catering services and, equipment, medical/dental supplies, prescription and over-the-counter medicines, sanitary/ hygiene supplies, and other pharmaceutical supplies for prisoners and detainees, including payment for prisoner-detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs and for DepCor Department of Correction Reservists.

(2) Expenditures from the Fund shall be approved by the Director of Corrections and posted on the Department's website.

(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund shall be maintained by the Director of Administration.

(4) Such accounting shall include and clearly identify the sources and amounts of all funds paid into or withdrawn from said Fund.

(b) The Corrections Revolving Fund shall be maintained separate and apart from all other funds of the government of Guam.

(c) No expenditures and encumbrances from the Corrections Revolving Fund shall be made without legislative approval through appropriation.



Suggested amendment to § 90.49

§ 90114. Corrections Revolving Fund.

There is hereby created, within the Department of Corrections, a revolving fund called the 'Corrections Revolving Fund', which shall be established by the Department of Administration in accordance with the following provisions:

(a) All funds collected from the U.S. Marshal Service, the U.S. Immigration Service and the U.S. Bureau of Prisons for housing U.S. inmates and detainees, confinement of military personnel as agreed to in a Memorandum of Agreement between the United States Air Force and the Department of Corrections dated March 5, 2003, employees of the Department of Corrections for meals they purchase at the Department's dining facility, and the sale of hot garbage (pig slop) to private persons, shall be deposited into said Fund.

(1) Funds in the Corrections Revolving Fund may be used to purchase clothing for inmates and detainees, foodstuffs for the dining facility, galley catering services and, equipment, medical/dental supplies, reading glasses, prescription and over-the-counter medicines, sanitary/ hygiene supplies, and other pharmaceutical supplies for inmates and detainees, including payment for inmate and detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs and for Department of Correction Reservists.

(2) Expenditures from the Fund shall be approved by the Director and posted on the Department's website.

(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund shall be maintained by the Director of Administration.

(4) Such accounting shall include and clearly identify the sources and amounts of all funds paid into or withdrawn from said Fund.

(b) The Corrections Revolving Fund shall be maintained separate and apart from all other funds of the government of Guam.



Article 2 - Western Interstate Corrections Compact §§ 90.50 - 90.66

Section	Recom.	Suggested change
<p>§ 90.50. Purpose of Article. The purpose of this Article is to enact enabling legislation for the enactment of the Western Interstate Corrections Compact, hereinafter referred to as the Compact. This Article may be cited as the Western Interstate Corrections Compact Enabling Act.</p>	No change	Renumber to § 90201
<p>§ 90.51. Compliance to §§ 90.46-90.48. No person shall be transferred to a correctional institution outside of Guam unless the applicable provisions of §§ 90.46, 90.47 or 90.48 of this Code have first been complied with or unless such person has been legally sentenced to a term of imprisonment in such a correctional institution.</p>	Amend	<p>§ 90202. Compliance to §§ 90108 and 90109.</p> <p>No person shall be transferred to a correctional institution outside of Guam unless the applicable provisions of §§ 90108 [Emergency Transfers of Inmates], or 90109 [Non-emergency Transfers of Inmates] of this Chapter have first been complied with or unless such person has been legally sentenced to a term of imprisonment in such a correctional institution.</p>



Article 2 - Western Interstate Corrections Compact

Section	Recom.	Suggested change
§ 90.52. Compact Stated.	No change	Renumber to § 90203
§ 90.54. Director, Department of Corrections May Commit Prisoner Outside of Guam Pursuant to Terms of Compact.	No change	Renumber to § 90204. Rename to Director, Department of Corrections May Commit Inmate Outside of Guam Pursuant to Terms of Compact.
§ 90.56. All Agencies of Government of Guam Shall Enforce Compact.	No change	Renumber to § 90205
§ 90.58. Director, Department of Corrections May Hold Hearings as Required by Compact.	No change	Renumber to § 90206



Article 2 - Western Interstate Corrections Compact

Section	Recom.	Suggested change
§ 90.60. Governor May Contract to Implement Compact.	No change	Renumber to § 90207
§ 90.62. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.	No change	Renumber to § 90208
§ 90.64. Severability.	No change	Renumber to § 90209
§ 90.66. Effective Date.	No change	Renumber to § 90210



Article 3 - Interstate Compact on Juveniles §§ 90.80 - 90.84

Section	Recom.	Suggested change
§ 90.80. Purpose of Article: Title.	Repeal	Move to Title 19, Chapter 20 DYA, as a new article.
§ 90.82. Governor to Execute Compact: Compact Stated.	Repeal	Move to Title 19, Chapter 20 DYA, as a new article.
§ 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.	Repeal	Move to Title 19, Chapter 20 DYA, as a new article.



Article 4 - Prison Industries

§ 90.90

§ 90.90. Prison Industries.

(a) Prison Industries, Established. The Department of Corrections is hereby authorized to establish such prison industries as may be feasible to provide a means for inmates and detainees to receive job training and skills development; to provide opportunities for the earning of wages to be used to pay restitution to victims of crime, and payment of fines and court costs; and to provide additional means for funding certain recurring expenses of the Department. The Department shall separate and designate each prison industry to be established as occurring “within the secured perimeter” or occurring “outside the secured perimeter.” This Act is not meant to replace the activities authorized by Chapter 84 of Article 1, Title 9, Guam Code Annotated, but shall be viewed as authorizing additional activities. This Chapter shall not supersede, nor affect any programs undertaken pursuant to Chapter 81 of this Title.

(b) Role of Corrections Advisory Council. The Corrections Advisory Council shall advise the Department on the suitability of any industry to be established, and may assist the Department in other matters relative to the establishment, operation, and maintenance of a chosen industry.

(c) Earnings Formula, established. Inmates shall be paid at no less than local prevailing wage rates as determined by the Director of Labor. Each inmate participating in a prison industry shall have all wages earned subject to this Earnings Formula:

(1) Twenty-five percent (25%) to the Criminal Injuries Compensation Fund.

(2) Twenty-five percent (25%) to payment of court-ordered fines, fees, and restitution. When such court-ordered fines, fees, and restitution have been satisfied, this percentage shall be applied to the Inmate’s Account.

(3) Twenty-five percent (25%) to the Prison Industries Revolving Fund.

(4) Twenty-five percent (25%) to the Inmate’s Account. Each participating inmate may elect to provide up to one hundred percent (100%) of the twenty-five percent (25%) for child and spousal support.

(5) In the event that the participating inmate does not owe any sum listed above, one hundred percent (100%) of earned wages shall be placed in the Inmate’s Account.

(d) Eligibility to Participate. The Department shall establish criteria for determining an inmate’s eligibility for participation in an established prison industry. All inmates shall be eligible for participation in an established prison industry consistent with eligibility requirements for other in-house prison rehabilitation programs unless otherwise ordered by a Court.

(e) In-kind Contributions and/or Credit for Services Allowed. The Department is authorized to enter into agreements with other government of Guam entities to receive in-kind contributions and/or a credit for services rendered in lieu of cash payments.

(f) Authority to Bid Granted. Notwithstanding the provisions of § 84.10(c) of Chapter 84, Article 1 of Title 9, Guam Code Annotated, the Department may submit its bid for the provision of services to a non-government entity, provided, that it includes as a component of its bid the costs for housing, utilities, food, supplies and any other item that would normally be considered as part of the overhead costs.



Suggested amendment to § 90.90

§ 90401. Prison Industries.

The Department is hereby authorized to establish such prison industries as may be feasible to provide a means for inmates and detainees to receive job training and skills development; to provide opportunities for the earning of wages to be used to pay restitution to victims of crime, and payment of fines and court costs; and to provide additional means for funding certain recurring expenses of the Department. The Department shall separate and designate each prison industry to be established as occurring “within the secured perimeter” or occurring “outside the secured perimeter.” This Act is not meant to replace the activities authorized by Chapter 84 of Article 1, Title 9, Guam Code Annotated, but shall be viewed as authorizing additional activities. This Chapter shall not supersede, nor affect any programs undertaken pursuant to Chapter 81 of this Title.

RECOMMENDATIONS:

- Retained entirety of subsection (a) with no changes.
- Removed language referring to Corrections Advisory Council (in light of recommended repeal), and references to earnings formula.



Article 4 - Prison Industries

§ 90.91

§ 90.91. Prison Industries Revolving Fund.

(a) There is hereby created, within the Department of Corrections, a revolving fund called the “Prison Industries Revolving Fund” (Fund), which shall be established by the Department of Administration in accordance with the following provisions:

(b) All funds collected from § 90.90(c) shall be deposited into said Fund.

(1) Funds in the Prison Industries Revolving Fund may be used to purchase clothing for prisoners and detainees, foodstuffs for the dining facility, galley catering services and equipment, medical/dental supplies, prescription and over-the-counter medicines, sanitary/hygiene supplies and other pharmaceutical supplies for prisoners and detainees, including, payment for prisoner-detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs for personnel specifically assigned to tasks involving Prison Industries, and for training of Department of Corrections personnel.

(2) Expenditures from the Fund shall be approved by the Director of Corrections and posted on the Department’s website.

(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund shall be maintained by the Director of Administration.

(4) Such accounting shall include and clearly identify the sources and amounts of all funds paid into or withdrawn from said Fund.

(c) The Prison Industries Revolving Fund shall be maintained separate and apart from all other funds of the government of Guam.

(d) The Fund shall be subject to an annual audit, and its findings shall be posted on the department’s website.



Suggested amendment to § 90.91

§ 90402. Prison Industries Revolving Fund.

(a) There is hereby created, within the Department, a revolving fund called the “Prison Industries Revolving Fund” (Fund), which shall be established by the Department of Administration.

RECOMMENDATIONS:

- Retained entirety of subsection (a) with no changes.
- Omitted language regarding use of fund from statute, as the subject could be appropriately addressed by promulgating rules and regulations.



§ 90.100 [renumber to § 90113]

Section	Recom.	Suggested change
<p>§ 90.100. [Untitled Section].</p> <p>When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, I Maga'lāhen Guåhan (the Governor of Guam) or the Director of the Department of Corrections, if designated by I Maga'lāhi (the Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. I Maga'lāhen Guåhan (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.</p>	No change	<p>§ 90113. Transfers Pursuant to Treaty.</p> <p>When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, I Maga'lāhen Guåhan (the Governor of Guam) or the Director of the Department of Corrections, if designated by I Maga'lāhi (the Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. I Maga'lāhen Guåhan (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.</p>



Article 6 - Civilian Corrections Reserve Program

§§ 90.201 - 90.209

Section	Recom.	Suggested change
§ 90.201. Creation.	No change	Renumber to § 90601
§ 90.202. Functions and Duties.	No change	Renumber to § 90602
§ 90.203. Recruitment.	No change	Renumber to § 90603
§ 90.204. Training, Equipping, and Maintenance of Records.	No change	Renumber to § 90604
§ 90.205. Reservist: Authority.	No change	Renumber to § 90605
§ 90.206. Same: Allowance.	No change	Renumber to § 90606
§ 90.207. Authorization for Full-Time CCRP Officers.	No change	Renumber to § 90607
§ 90.208. Same: Eligibility and Oath.	No change	Renumber to § 90608
§ 90.209. Rules and Regulations: Recommendations.	No change	Renumber to § 90609



Article 2, § § 90.50 – 90.62

Section	Recom.	Suggested change
§ 90.60. Governor May Contract to Implement Compact.	No change	Renumber to § 90207
§ 90.62. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.	No change	Renumber to § 90208
§ 90.64. Severability.	No change	Renumber to § 90209
§ 90.66. Effective Date.	No change	Renumber to § 90210



Article 7 - Department of Corrections Modernization Act of 2021 §§ 90.301 - 90.314

§ 90.301. Legislative Findings and Policy.

(a) I Liheslaturan Guåhan finds that the Department of Corrections (DOC) was established by Public Law 9-208 on July 18, 1968 within the executive branch of the Government of Guam. Before the enactment of Public Law 9-208, the Department of Corrections was first known as the Guam Penitentiary and through Executive Order 68-23, issued by Governor Manuel F.L Guerrero, the Penitentiary was transferred to the Department of Corrections, which was effective on November 1, 1968.

(b) The Department of Corrections is the only prison on Guam and provides services to local and federal agencies. DOC provides custodial care to individuals who are convicted of crimes and for those who are waiting judicial disposition. The environment of the prison must meet federal standards such as the National Prison Standards, Prison Rape Elimination Act (PREA), and the National Commission on Correctional Healthcare Standards (NCCHC), which ensures that the living conditions are decent and humane; but, with the issue of overcrowding and structural failures, DOC has been struggling to properly execute their mandates and comply with national standards. DOC is ensuring that it prevents any violations of the Federal Consent Decree, which requires the Government of Guam to improve the living conditions of the inmates following the Civil Rights of Institutionalized Persons Act.

(c) The Adult Correctional Facility (ACF) in Mangilao is in its stages of failure due to age and lack of modern technology, which is affecting the operations and personnel of the correctional agency. The ACF was built to hold a maximum of three hundred (300) inmates and detainees; and currently, the population of Guam is growing as well as its crime rates, while DOC has outgrown its ACF. Over time, other DOC buildings were added to address the overcrowding issues of the ACF, and buildings used for rehabilitation and offices were re-designed to accommodate the rising population of prisoners. The Adult Correctional Facility is made of fifteen (15) housing units, which holds not only local inmates and detainees, but also immigration and federal detainees. The lack of proper facilities prevents DOC from properly providing rehabilitation to the inmates.

(d) The poor condition of the housing units of the prison is not cost effective or adequate to handle the growing prisoner population, and DOC recognized the difficulty in meeting its mandates of providing security, health, rehabilitation and welfare to the inmates and detainees under its care without compromising the well-being of its personnel. The main goal of the Department of Corrections is to provide rehabilitation to individuals who have been convicted of crimes and ensure that they become useful members of the community and to themselves.

(e) Furthermore, I Liheslaturan Guåhan finds that DOC has plans to build a new Department of Corrections facility with a bed capacity for one thousand (1,000) inmates to replace its current prison if funding was available. The new prison would provide the proper space to meet its mandates and the demands of its growing prisoner population. The Department of Corrections had started to draft an eighty (80)-year master plan, which will provide a phase-to-phase plan to construct a new Department of Corrections facility that will meet its construction goal of a bed capacity of one thousand (1,000) inmates. The Department of Corrections' goal is to ensure that all the issues on structural, technology, and security of the inmates and personnel are covered. The master plan also ensures that DOC meets all federal standards such as the National Prison Standards and PREA standards.



§§ 90.301 continued

§ 90.301. Legislative Findings and Policy.

...

(f) Therefore, it is the intent of I Liheslaturan Guåhan to provide the Department of Corrections with the proper confinement of offenders in a controlled environment prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, which also promotes the safety of the people of Guam. I Liheslaturan Guåhan has identified funding to construct a new Department of Corrections Adult Correctional Facility through the Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million Dollars (\$60,000,000) annually, of which an estimate of no more than Five Million Dollars (\$5,000,000) will be allocated for the payments of the lease-back agreement.

(g) In an effort to overcome financing hurdles, and to provide DOC with the proper tools to meet its mandates, I Liheslaturan Guåhan desires to authorize the Government of Guam to enter into contract for the financing, design, construction, and long-term capital maintenance of a new Department of Corrections facility with private sector contractors who can provide long-term financing.

(h) To facilitate the financing, design, construction, and maintenance of a new Department of Corrections facility envisioned by this Act, the Government of Guam will be authorized to execute a lease agreement of existing property under its inventory for up to thirty (30) years on which the new Department of Corrections facility will be constructed.

(i) The lease of the Government of Guam's property will be to the contractor and/or the Guam Economic Development Authority, who will design and construct the new Department of Corrections facility and provide a funding for the design and construction through appropriations received from the reimbursement of the Earned Income Tax Credit for Fiscal Year 2022 and prospective appropriations from the General Fund, thereafter annually. Upon completion of the construction, the facilities and land will be leased back to the Government of Guam for a period not to exceed the initial ground lease to the contractor over which time the Government of Guam will amortize, as lease payments to the contractor, the cost of financing, design, construction, and related expenses of the new Department of Corrections.

(j) The contractor/developer will also be responsible for the capital maintenance and repair of the Department of Corrections constructed under this Act, which costs shall be paid by the Government of Guam as provided for under this Act. At the expiration of the lease-back period, the Government of Guam real property and the Department of Corrections constructed on the Government of Guam real property will revert to the Government of Guam with no further obligations to the contractor.



Suggested amendment to § 90.301

§ 90701. Legislative Findings and Policy.

(a) I Liheslaturan Guåhan finds that the Department of Corrections (DOC) was established by Public Law 9-208 on July 18, 1968 within the executive branch of the Government of Guam. Before the enactment of Public Law 9-208, the Department of Corrections was first known as the Guam Penitentiary and through Executive Order 68-23, issued by Governor Manuel F.L Guerrero, the Penitentiary was transferred to the Department of Corrections, which was effective on November 1, 1968.

(b) Furthermore, I Liheslaturan Guåhan finds that DOC has plans to build a new Department of Corrections facility with a bed capacity for one thousand (1,000) inmates to replace its current prison if funding was available. The new prison would provide the proper space to meet its mandates and the demands of its growing prisoner population. The Department of Corrections had started to draft an eighty (80)-year master plan, which will provide a phase-to-phase plan to construct a new Department of Corrections facility that will meet its construction goal of a bed capacity of one thousand (1,000) inmates. The Department of Corrections' goal is to ensure that all the issues on structural, technology, and security of the inmates and personnel are covered. The master plan also ensures that DOC meets all federal standards such as the National Prison Standards and PREA standards.

(c) Therefore, it is the intent of I Liheslaturan Guåhan to provide the Department of Corrections with the proper confinement of offenders in a controlled environment prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, which also promotes the safety of the people of Guam. I Liheslaturan Guåhan has identified funding to construct a new Department of Corrections Adult Correctional Facility through the Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million Dollars (\$60,000,000) annually, of which an estimate of no more than Five Million Dollars (\$5,000,000) will be allocated for the payments of the lease-back agreement.



Suggested amendment to § 90.301

§ 90701. Legislative Findings and Policy.

...

(d) In an effort to overcome financing hurdles, and to provide DOC with the proper tools to meet its mandates, I Liheslaturan Guåhan desires to authorize the Government of Guam to enter into contract for the financing, design, construction, and long-term capital maintenance of a new Department of Corrections facility with private sector contractors who can provide long-term financing.

(e) To facilitate the financing, design, construction, and maintenance of a new Department of Corrections facility envisioned by this Act, the Government of Guam will be authorized to execute a lease agreement of existing property under its inventory for up to thirty (30) years on which the new Department of Corrections facility will be constructed.

(f) The lease of the Government of Guam's property will be to the contractor and/or the Guam Economic Development Authority, who will design and construct the new Department of Corrections facility and provide a funding for the design and construction through appropriations received from the reimbursement of the Earned Income Tax Credit for Fiscal Year 2022 and prospective appropriations from the General Fund, thereafter annually. Upon completion of the construction, the facilities and land will be leased back to the Government of Guam for a period not to exceed the initial ground lease to the contractor over which time the Government of Guam will amortize, as lease payments to the contractor, the cost of financing, design, construction, and related expenses of the new Department of Corrections.

(g) The contractor/developer will also be responsible for the capital maintenance and repair of the Department of Corrections constructed under this Act, which costs shall be paid by the Government of Guam as provided for under this Act. At the expiration of the lease-back period, the Government of Guam real property and the Department of Corrections constructed on the Government of Guam real property will revert to the Government of Guam with no further obligations to the contractor.



Article 7 – DOC Modernization Act of 2021

§§ 90.301 - 90.314

Section	Recom.	Suggested change
§ 90.302. Definitions.	No change	Renumber to § 90702
§ 90.303. Authorization to Enter into Long-Term Leases.	No change	Renumber to § 90703
§ 90.304. Identification of Projects and Procurement.	No change	Renumber to § 90704
§ 90.305. Responsibility of Contractor/Developer.	No change	Renumber to § 90705
§ 90.306. Contractual Safeguards.	No change	Renumber to § 90706
§ 90.307. Assignments.	No change	Renumber to § 90707
§ 90.308. Pledge or Reservation of Revenues.	No change	Renumber to § 90708



Article 7 – DOC Modernization Act of 2021

§§ 90.301 - 90.314

Section	Recom.	Suggested change
§ 90.309. Use of Tax-Exempt Bond, Taxable Bond, and Other	No change	Renumber to § 90709
§ 90.3110. Prison IT, Building, and Security Management System.	No change	Renumber to § 90710
§ 90.311. Utilities and Routine Maintenance and Repair.	No change	Renumber to § 90711
§ 90.312. Maintenance Fund.	No change	Renumber to § 90712
§ 90.313. Rules and Regulations.	No change	Renumber to § 90713
§ 90.314. Financial Plan Required.	No change	Renumber to § 90714



DOCO - Going forward

- Replacement for Hon. Elizabeth Barrett-Anderson
- Next for review:
 - Chapter 58 - Escape and Related Offenses
- Address referrals from other subcommissions
 - Chapter 85 - Guam Parole Board



Thank you!



Crimes Against Persons Subcommittee Criminal Law & Procedure Review Commission

Members and ex officio members

GPD Chief Steve Ignacio

GPD Major Manny Chong

Public Defender Steve Hattori

Dep. Public Defender John Morrison

Assistant Attorney General Christine Tenorio

Attorney Sean Brown

Attorney Joseph B. McDonald

PROPOSED AMENDMENTS TO TITLE 9 CH. 16

CRIMINAL HOMICIDE

PRESENTATION BY J. MCDONALD
PLENARY MEETING, 12 P.M., OCT. 5, 2023



ASSIGNED CHAPTERS

CHAPTER	SUBCOMMISSION MEMBER
7 – Exemptions and Defenses	John Morrison
16 – Criminal Homicide	Joe McDonald
17 Unborn victims of violence	Joe McDonald
19 – Assault, Reckless Endangering, Terrorizing	Sean Brown
22 – Kidnapping and Related Offenses	Christine Tenorio
25 – Sexual Offenses	John Morrison
25 A – Solicitation of Children and Child Pornography	Sean Brown
26 A – Human Trafficking and Criminal Exploitation	Christine Tenorio
31 – Offenses Against the Family	Christine Tenorio
40 – Robbery	Sean Brown
92 – Infant Child’s Right to Life Act	Joe McDonald



CRIMINAL HOMICIDE OVERVIEW

§ 16.10. Definitions Applicable to Chapter.

§ 16.20. Criminal Homicide Defined.

§ 16.30. Aggravated Murder Defined.

§ 16.40. Murder Defined.

§ 16.50. Manslaughter Defined and Classified.

§ 16.60. Negligent Homicide Defined and Classified



Current Conduct Statutes

§ 16.20. Criminal Homicide Defined. (a) A person is guilty of criminal homicide if he causes the death of another human being: (1) intentionally and with premeditation; or (2) intentionally; or (3) knowingly; or (4) recklessly; or (5) by criminal negligence.

AGGRAVATED MURDER § 16.30	MURDER § 16.40	MANSLAUGHTER § 16.50
Premeditated murders	Intentional murders	Reckless homicides
Felony murder rule homicides	Reckless with extreme indifference to value of human life homicides	Extreme emotional disturbance murders
Minor under 18 dies from illegal use of controlled substance	Death of person > 18 directly caused by illegal use of CS	Death of person > 18 proximately caused by illegal use of CS
Murder for hire		
Life; not eligible for parole	Life; eligible for parole after 15 years	5 to 20 years



P.L. 24-282 (1998)



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AGGRAVATED MURDER	MURDER	MANSLAUGHTER
<p>(3) death is directly caused by the illegal use of a Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old (Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substances directly causes the death of such minor child, is guilty of aggravated murder. This Section shall not apply to health care professionals and pharmacists in the legitimate practice of the healing arts).</p>	<p>(3) death is directly caused by the illegal use of a Schedule I Controlled Substance, defined by Chapter 67 of this Title, to any person. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance directly causes the death of such person, is guilty of murder. This Section shall not apply to health care professionals and pharmacists in the legitimate practice of the healing arts.</p>	<p>(3) death is indirectly or proximately caused, such as an accident, by the illegal use of a Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a person under the influence of such controlled substance. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance indirectly or proximately causes the death of such person, is guilty of manslaughter. This Section shall not apply to health care professionals and pharmacists in the legitimate practice of the healing arts.</p>



Issues with subparagraphs (a)(3) in §§16.30, 16.40 and 16.50

- Illegal use vs. Transfer or Sale as specific other offense conduct
- Schedule I CS; stated intent was to penalize where death was because of crystal methamphetamine, a Sched. II CS
- Loophole for defendants exactly 18 years old
- Illegal loophole for healthcare professionals dispensing a Sched. 1 CS
- **Whether there is sufficient mental state? *C.f.* §4.30 (c) reckless vs. proximate (legal)/indirect cause/accident; sufficient mental state?**



Recommended Amendments to Aggravated Murder Offense

Title 9 GCA § 16.30 is recommended to be amended as follows:

§ 16.30. Aggravated Murder Defined. (a) Criminal homicide constitutes aggravated murder when:

- (1) it is committed intentionally with premeditation; or
- (2) it is committed during the commission or attempt to commit any felony defined in Chapters 22, 25, 31, 34, 37, 40 or 58 of this Title; or
- (3) death is directly caused by the illegal use of a Schedule I ~~or Schedule II~~ Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old ~~(Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substances directly causes the death of such minor child, is guilty of aggravated murder. This Section shall not apply to health care professionals and pharmacists in the legitimate practice of the healing arts.);~~ or
- (4) Death of a minor child under the age of eighteen (18) is directly caused by a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title by a person who is not licensed to prescribe or dispense the substance; or
- (5) it is committed upon the orders of another person. Such person giving the order is also guilty of aggravated murder.



Recommended Amendments to Murder Offense

§ 16.40. Murder Defined. (a) Criminal homicide constitutes murder when:

- (1) it is committed intentionally or knowingly; or
- (2) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life; or
- (3) death is directly caused by the illegal use of a Schedule I or Schedule II Controlled Substance, defined by Chapter 67 of this Title, to any person; or
- (4) Death of a person who is eighteen (18) years or older is the result of a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title.



Recommended Amendments to Manslaughter Offense Option 1

§ 16.50. Manslaughter Defined and Classified. (a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse ~~(The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.);~~ or

(3) death is indirectly or proximately caused, such as an accident, by the illegal use of a Schedule I ~~or~~ Schedule II Controlled Substance, as defined by Chapter 67 of this Title, to a person under the influence of such controlled substance; ~~or - Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance indirectly or proximately causes the death of such person, is guilty of manslaughter. This Section shall not apply to health care professionals and pharmacists in the legitimate practice of the healing arts.~~

(4) death of a person who is eighteen (18) years or older results from a knowing or willing transfer or sale of a Schedule I or Schedule II controlled substance, where such controlled substance proximately causes the death of such person.

(b) The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.

(c) Manslaughter is a felony of the first degree.



Recommended Amendments to Manslaughter Offense Option 2

§ 16.50. Manslaughter Defined and Classified. (a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse ~~(The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.)~~

(b) The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.

(c) Manslaughter is a felony of the first degree.



Issues reviewed but no Subcommission recommendations

- Deadly weapons definition/conspiratorial liability/liability for attempt
- Violent crime definition



Chapter number, name	Section	<u>No-Change</u>	<u>AMEND</u>	<u>REPEAL</u>	<u>REPEAL & RE-ENACT</u>
16 - Criminal Homicide					
	§16.10	NC			
	§16.20	NC			
	§16.30		Amend		
	§16.40		Amend		
	§16.50		Amend		
	§15.60	NC			



Thank you!



**Notice of Next Meeting
Thursday, December 7, 2023, Noon
(Tentative)**



Agenda

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES August 31, 2023
- V. OLD BUSINESS
 - A. Membership Update.
 - B. Third Quarter Report
 - C. Overview of Approvals of Recommendations of the Subcommissions on Criminal Procedure and Crimes Relating to Property at Plenary Meeting of August 31, 2023
- VI. NEW BUSINESS
 - A. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommission on Drug & Other Criminal Offenses for Discussion and Approval
 - B. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommission on Crimes Against Persons for Discussion and Approval
 - C. Notice of next meeting: Thursday, December 7, 2023, Noon (Tentative)
- VII. Communications
- VIII. Public Comment
- IX. Adjournment



Thank you!