

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
PLENARY MEETING FEBRUARY 29, 2024  
AGENDA**

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES                      October 5, 2023, December 7, 2023
- V. OLD BUSINESS
  - A. Fourth Quarter Report
  - B. Subcommittee on Drugs & Other Criminal Offenses: Continued Discussion of Proposed 9 GCA § 90106 (Correctional Medical Clinics) for Consideration and Approval
  - C. Subcommittee on Crimes Relating to Property: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
- VI. NEW BUSINESS
  - A. Subcommittee on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - B. Notice of Next Meeting: Thursday, April 4, 2024, Noon (Tentative)
- VII. Communications
- VIII. Public Comment
- IX. Adjournment



**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
NOTICE OF PUBLIC MEETING**

The Guam Criminal Law and Procedure Review Commission will conduct a plenary meeting on Thursday, February 29, 2024 at 12:00 pm in the Guam Judicial Center, Judge Joaquin V.E. Manibusan, Sr. Memorial Courtroom, 120 West O'Brien Drive, Hagåtña, and by videoconference. The meeting will be streamed live on the Judiciary of Guam YouTube channel: <https://www.youtube.com/channel/UCfnFCWwllp99fAeh9zi4O4g>

**AGENDA**

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES October 5, 2023, December 7, 2023
- V. OLD BUSINESS
  - A. Fourth Quarter Report
  - B. Subcommission on Drugs & Other Criminal Offenses: Continued Discussion of Proposed 9 GCA § 90106 (Correctional Medical Clinics) for Consideration and Approval
  - C. Subcommission on Crimes Relating to Property: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
- VI. NEW BUSINESS
  - A. Subcommission on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - B. Notice of Next Meeting: Thursday, April 4, 2024, 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

**APPLY NOW!!!**

**6 - CAMP COOK with min. 1 yr. exp. \$13.07 PER HOUR\***

Prepares and cooks Filipino dishes and other style cuisines for construction crew. (Must possess a health certificate after hiring.)

**60 - CARPENTER with min. 1 yr. exp. \$15.58 PER HOUR\*\***

Performs carpentry duties for residential, commercial and government projects. \*\*\*(For work performed on Service Contract Act projects: additional benefits of Health and Welfare Benefits of \$4.57 per hour up to 40 hours per week; Paid time off up to 80 hours of paid vacation after 1 year of service and up to 160 hours after 3 years of service; and 11 paid holidays per year.)

**60 - CEMENT MASON with min. 1 yr. exp. \$15.66 PER HOUR\*\***

Performs cement mason duties for residential, commercial and government projects. \*\*\*(For work performed on Service Contract Act projects: additional benefits of Health and Welfare Benefits of \$4.57 per hour up to 40 hours per week; Paid time off up to 80 hours of paid vacation after 1 year of service and up to 160 hours after 3 years of service; and 11 paid holidays per year.)

**5 - ELECTRICIAN with min. 2 yrs. exp. \$18.41 PER HOUR\***

Performs electrician duties for residential, commercial and government projects.

**7 - HEAVY EQUIPMENT OPERATOR with min. 1 yr. exp. \$18.06 PER HOUR\***

Performs heavy equipment operator duties for residential, commercial and government projects. (Must be able to obtain chauffeur's license)

**25 - REINFORCING METAL WORKER with min. 1 yr. exp. \$16.73 PER HOUR\***

Performs reinforcing metal worker duties for residential, commercial and government projects.

**4 - SHEET METAL WORKER with min. 1 yr. exp. \$17.66 PER HOUR\***

Performs sheet metal worker duties for residential, commercial and government projects.

*\*Special Wage Rate:* Work to be performed on DPRI-funded projects and projects covered by Davis Bacon, Service Contracts Act, and/or Executive Order 14206 will be paid no less than the indicated wage rate but may be paid more where special rates apply.

Successful applicant must be able to obtain military base access pass upon hire. Off-island applicants must complete a health screening prior to working on Guam. Employees are required to take and pass a substance abuse test after hire.

**Benefits:** Round-trip airfare for off-island hire, food and lodging @ \$113.72/wk.; local transportation to/from jobsite from the employer's designated housing facility; and employer/employee-paid medical insurance provided.

*The job offer meets all EEO requirements, and initiates a temporary placement. The recruitment associated with this job offer is closely monitored by the Department of Labor. Qualified, available and willing U.S. workers are highly encouraged to apply. Should you qualify for the job and are not hired, you may appeal with the Department of Labor who will independently review matter.*

**For complete duties, apply in person at the American Job Center  
414 W. Soledad Avenue, Suite 300 GCIC Building Hagatna, Guam  
Or apply online at [www.hireguam.com](http://www.hireguam.com); Enter Keyword: 2024-029**

**PUBLICATION NOTICE**

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

**FINEST GUAM GOLF & RESORT, INC.  
DBA: FONTANA RESTAURANT (TAKEOVER)**

has applied for a Class: FOUR(4) GENERAL ON-SALE Alcoholic Beverage License said premises being marked as Lot: LOT 8 BLK 3-NEWTRACT 5312, RT 3 NCS DEDEDO

**JOB ANNOUNCEMENT FOR TEMPORARY POSITIONS**

- 15 - Carpenter (1 yr. exp) \$15.58/Hr.**
- 20 - Cement Mason (1 yr. exp) \$15.66/Hr.**

Apply at Mega United Corp., Ltd.  
by calling (671) 689-3293 OR (671) 686-8208.  
References required upon request.

**APPLY NOW!!**

**15 - CARPENTER WITH 1 YEAR EXPERIENCE \$15.58 PER HOUR**

Constructs, erects, installs and repairs structures and fixtures of wood, wallboard and plywood, including framework. Uses carpenter's hand tools and power tools conforming to local building codes. Reads blueprints, sketches, or building plans to determine type of work required and materials needed. Prepares layout, using ruler, framing square, and calipers. Erects framework for structure and lay subfloor board. Install window frames, cabinet, door frames and door hardware, erect scaffolding and ladders for assembling structure above ground level.

**20 - CEMENT MASON WITH 1 YEAR EXPERIENCE \$15.66 PER HOUR**

Smooths and finishes surfaces of poured concrete floors, walls, sidewalks, or curbs to specified textures using hand tools or power tools including floats, trowels, and screeds. Signals concrete deliverer to position truck to facilitate pouring concrete. Spreads concrete into inaccessible section of forms using rake or shovel. Levels concrete to specified depth and workable consistency using hand screed and floats to bring water to surface and produce soft topping. Lays concrete blocks and mixes cement using shovel or cement mixing machine.

**Benefits:** Round trip airfare for off-island hire; Meals and lodging at \$80.00/week; Local transportation to/from jobsite from the employer's designated housing facility. Employees are required to take and pass a substance abuse test after hire.

*The job offer meets all EEO requirements, and initiates a temporary placement. The recruitment associated with this job offer is closely monitored by the Department of Labor. Qualified, available and willing U.S. workers are highly encouraged to apply. Should you qualify for the job and are not hired, you may appeal with the Department of Labor who will independently review matter.*

**Apply in person at the American Job Center  
414 W. Soledad Avenue, Suite 300 GCIC Building Hagatna, Guam  
Or apply online at [www.hireguam.com](http://www.hireguam.com); Enter Keyword: 2024-040**

**EMCE Consulting  
Engineers, Inc.**

**Electrical Engineer**

- Bachelor's Degree in Electrical Engineering
- 2 yrs. experience as Electrical Engineer/Designer
- Experience in Communications Design a plus

**Junior Electrical Engineer**

- Experience in Project Management a plus
- Bachelor's Degree in Electrical Engineering
- Experience in AutoCAD or Revit a plus

**Electrical CADD Operator**

- Proficiency with AutoCAD 2014 or higher
- 2 yrs. experience a plus
- Proficiency with Revit a plus

**Secretary**

- Knowledge of Microsoft Word, Excel, and Powerpoint
- Must have Driver's License to run errands
- Good communication skills, written and verbal

**Email Resume to:  
[hr@emceconsulting.com](mailto:hr@emceconsulting.com)**



**WE ARE HIRING!**  
 Come and join our Kings Family!  
 Flexible schedules for full and part time positions  
**KINGS TAMUNING and DEDEDO locations**

**SERVERS**  
 Earn up to \$150.00/  
 day as a server!  
 (Inclusive of base  
 hourly rate and tips)

**COOKS**  
 \$15.00/hour or  
 more for cooks!  
 (Based on  
 experience)

**APPLY NOW!**  
 Call us at (671) 646 6083/84/85 or  
 Visit Kings Restaurants to pick up an application!

**APPLY NOW!!!**

**15 - AUTOMOTIVE MECHANIC WITH 18 MONTHS EXPERIENCE \$24.33 PER HOUR\***

Duties: Repairs, rebuilds, and/or overhauls major assemblies of internal combustion automobiles, buses, trucks or tractors. Work involves most of the following: Diagnosing the source of trouble and determining the extent of repairs required; replacing worn or broken parts such as piston rings, bearings or other engine parts; grinding and adjusting valves; rebuilding carburetors; overhauling transmissions; and repairing fuel injection, lighting and ignition systems. Diagnose, adjust, repair and overhaul automobiles, buses, trucks, tractors and construction equipment, and maintain and repair diesel engines. Diagnose faults and/or malfunctions in engines to determine required repairs using engine diagnostic equipment such as computerized test equipment and calibration devices. Repair, overhaul and replace engines and subassemblies such as transmissions, transmission differentials, ignition systems, pumps, generators, control valves and hydraulic cylinders using mechanic's hand tools, welding equipment, standard charts and hoist. Test, repair, overhaul and replace engines, and such subassemblies to ensure operating properly. Adjust and reline brakes, align wheels and reassemble equipment. Install new ignition systems, align wheels, change or recharge batteries and replace transmissions and other parts. Inspect, repair and maintain mechanical equipment and machinery such as pumps and compressors. Perform routine maintenance such as lubricating equipment and machinery.

**13 - HEAVY & TRACTOR-TRAILER TRUCK DRIVER WITH 1 YEAR EXPERIENCE; MUST BE ABLE TO ACQUIRE COMMERCIAL (C) DRIVER'S LICENSE AFTER HIRING) \$17.46 PER HOUR\***

Duties: Drives trucks with capacities greater than 3 tons, including tractor-trailer combinations, to transport and deliver products and other materials. Checks vehicles to ensure that mechanical, safety, and emergency equipment is in good working order. Operates vehicles and material-moving equipment. Maneuvers trucks into loading or unloading positions, following signals from loading crew and checking that vehicle and loading equipment are properly positioned. Secures cargo for transport, using ropes, blocks, chain, binders, or covers. Inspects loads to ensure that cargo is secure. Couples or uncouples trailers by changing trailer jack positions, connecting, or disconnecting air or electrical lines, or manipulating fifth-wheel locks. Collects delivery instructions from appropriate sources, verifying instructions and routes. Obtains receipts or signatures for delivered goods and collect payment for services when required. Checks conditions of trailers after contents have been unloaded to ensure that there has been no damage. Performs basic vehicle maintenance tasks, such as adding oil, fuel, or radiator fluid, performing minor repairs, or washing trucks. Reports vehicle defects, accidents, traffic violations, or damage to the vehicles. Maintains logs of working hours or of vehicle service or repair status, following applicable state and federal regulations.

**4 - MACHINERY MAINTENANCE & REPAIR WORKER WITH 2 YEARS EXPERIENCE; MUST POSSESS ONE-YEAR CERTIFICATE IN REFRIGERATION AND AIR CONDITIONING TECHNOLOGY, OR PRACTICAL ELECTRICITY, OR RELATED FIELD) \$14.35 PER HOUR\***

Duties: Repairs and performs routine maintenance on equipment and machinery such as commercial freezers and refrigeration equipment, auxiliary generators, rotary oven, proofer, meat grinders, meat slicers and other miscellaneous food processing equipment. Diagnoses mechanical problems and determines how to correct them through inspecting, operating, or testing machinery or equipment; checking blueprints, repair manuals, or parts catalogs and reading other technical information needed to perform maintenance or repairs and reading other technical information needed to perform maintenance or repairs. Plans and lays out repair work, using diagrams, drawings, blueprints, maintenance manuals, or schematic diagrams. Repairs machinery, equipment, or structures, using tools and precision measuring instruments or electrical or electronic testing devices. Assembles, installs, or repairs wiring, electrical or electronic components, pipe systems, plumbing, machinery, or equipment. Installs machine or equipment replacement parts. Ensures repaired machinery and equipment are fully operational, meet manufacturer's specifications, and meet safety regulations. Performs routine maintenance, such as inspecting drives, motors, or belts, checking fluid levels, replacing filters, or doing other preventive maintenance actions. Orders parts, supplies, or equipment from catalogs or suppliers. Maintains a log of type and cost of maintenance or repair work.

*\*Special Wage Rate:* Work to be performed on DPRI-funded projects and projects covered by Davis Bacon, Service Contracts Act, and/or Executive Order 14206 will be paid no less than the indicated wage rate but may be paid more where special rates apply.

Successful applicant must be able to obtain military base access. Employees are required to take and pass a substance abuse test after hire.

**Benefits:** Round-trip airfare for off-island hire, food & lodging @ \$80.00/wk., Health and Welfare Benefits of \$4.54 p/hr., and 10 paid holidays per year.

*The job offer meets all EEO requirements, and initiates a temporary placement. The recruitment associated with this job offer is closely monitored by the Department of Labor. Qualified, available and willing U.S. workers are highly encouraged to apply. Should you qualify for the job and are not hired, you may appeal with the Department of Labor who will independently review matter.*

**Apply in person at the American Job Center**  
 414 W. Soledad Avenue, Suite 300 GCIC Building Hagatna, Guam  
 Or apply online at [www.hireguam.com](http://www.hireguam.com); Enter Keyword: 2024-041

**CLASSIFIED ADVERTISING**



**REAL ESTATE?**  
 Sell, rent, buy, property  
 through real estate ads.  
 Ads can include photos,  
 company logos to meet  
 your needs and help you  
 get the sale!

**ONLY \$14.00**  
 A DAY/COLUMN INCH  
 THE GUAM DAILY POST

Call us at 671.649.1924 or email [sales@postguam.com](mailto:sales@postguam.com)  
 Mon. - Fri. 8:00 am - 5:00 pm

**FOR RENT**

**MAITE APARTMENT**  
**3BR/1BA**  
**4BR/2BA**  
**SEC8/GERA OK**  
**(671) 788-1119**  
**(671) 477-4239**

**ISLAND-WIDE HOME DELIVERY**  
 Get the most local print content  
 delivered to your doorstep daily.  
 Contact us at [customerservice@postguam.com](mailto:customerservice@postguam.com)  
 or call 671-649-1924



**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION NOTICE OF PUBLIC MEETING**

The Guam Criminal Law and Procedure Review Commission will conduct a plenary meeting on Thursday, February 29, 2024 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. The meeting will be streamed live on the Judiciary of Guam YouTube channel: <https://www.youtube.com/channel/UCFnFCWwllp99fAeh9z4DQg>

**AGENDA**

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES October 5, 2023, December 7, 2023
- V. OLD BUSINESS
  - A. Fourth Quarter Report
  - B. Subcommittee on Drugs & Other Criminal Offenses: Continued Discussion of Proposed 9 GCA § 90106 (Correctional Medical Clinics) for Consideration and Approval
  - C. Subcommittee on Crimes Relating to Property: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
- VI. NEW BUSINESS
  - A. Subcommittee on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - B. Notice of Next Meeting: Thursday, April 4, 2024, 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

**AVAILABLE JOBS FOR ELIGIBLE U.S. WORKERS**

**5 - PLUMBER with min. 2 yrs. exp. \$17.05 PER HOUR**

Assembles, installs and repairs pipes, fittings and fixtures of heating water and drainage systems according to specifications and plumbing codes. Studies building plans and drawings to determine work required and sequence of installations. Inspects structure to ascertain obstruction to be avoided, to prevent weakening of structure resulting from installation of pipes. Locates and marks position of pipe and pipe connections and passage holes for pipes in walls and floors using ruler, spirit level and plumb bob. Cuts openings in walls and floors to accommodate pipe and pipe fittings using hand and power tools. Cuts and threads pipe using pipe cutters, cutting torch and pipe threading machine. Bends pipe to required angle by use of pipe bending machine or placing pipe over block and bending it by hand. Solders cooper pipes and fittings. Assembles and installs valves, pipefittings and pipes composed of metals such as iron, steel, brass and lead.

**Benefits:** Round trip airfare for off-island hire; Meals and lodging at \$40.00/week; and Local transportation to/from jobsite from the employer's designated housing facility.

*The job offer meets all EEO requirements, and initiates a temporary placement. The recruitment associated with this job offer is closely monitored by the Department of Labor. Qualified, available and willing U.S. workers are highly encouraged to apply. Should you qualify for the job and are not hired, you may appeal with the Department of Labor who will independently review matter.*

**Apply in person at the American Job Center**  
 414 W. Soledad Avenue, Suite 300 GCIC Building Hagatna, Guam  
 Or apply online at [www.hireguam.com](http://www.hireguam.com); Enter Keyword: 2024-043



# 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
----------	--------------------

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 2 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 29<sup>th</sup> 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: \_\_\_\_\_

# ATTACHMENT 1 - DOCO PRESENTATION

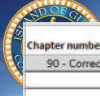


## Report of the Subcommittee on Drugs and Other Criminal Offenses (DOCO)

### 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

1




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

2



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

3



Chapter number, name	Section number	NO CHANGE	AMEND	REPEAL	REPEAL & RE-ENACT
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			

4



## 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

5



## 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

6



## 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 subcommission

7



## Article 1 - Department of Corrections

### §§ 90.10 - 90.44

Section	Recom.	Suggested change
§ 90.10. Definitions. As used in this Chapter: (a) Director means the Director of Corrections. (b) Department means the Department of Corrections.	Amend	<p>§ 90101. Definitions. As used in this Chapter: (a) Director means the Director of Corrections. (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>

8

**§ 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. <b>Mission Statement</b>  <b>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.</b></p>

**§ 90.16.**

Section	Recom.	Suggested change
<p><b>§ 90.16. Minimum Qualifications for Department of Corrections Officers.</b>            (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.</p>		

**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.            (a) The Department of Corrections shall conduct a corrections officer recruits training cycle for at least twenty (20) candidates per fiscal year.            (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.            (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, <b>subject to appropriation.</b></p>




### § 90.20

Section	Recom.	Suggested change
<p>§ 90.20. Corrections Advisory Council Established.</p> <p>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 &amp; 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 advise 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.</p> <p>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, <b>for inmates and detainees.</b></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) <b>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.</b></p>




### § 90.30

Section	Recom.	Suggested change
<p>§ 90.30. Rules, Regulations &amp; Disciplinary Rules Authorized.</p> <p>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) <b>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.</b></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>	Amend	<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) <b>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.</b></p>



### § 90.41

Section	Recom.	Suggested change
<p>§ 90.41. Inmate Commissary.</p> <p>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.</p> <p>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

Section	Recom.	Suggested change
<p>§ 90.42. Operation of Inmate Commissary.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(d) When entering into a contract under Subsection (a) of this Section, the Director or the Director's designee shall consider the following:</p> <ol style="list-style-type: none"> <li>(1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;</li> <li>(2) the menu items offered by the provider and the price of those items;</li> <li>(3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;</li> <li>(4) safety and security procedures to be performed by the provider; and</li> <li>(5) the performance record of the provider, including service availability, reliability, and efficiency.</li> </ol> <p>(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.</p> <p>(f) The Department of Corrections shall establish rules and regulations for the administration of this Section prior to operation of the inmate commissary.</p>		



## 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
§ 90.43. Corrections Commissary Fund. (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. (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.	Amend	§ 90116. Operation of Commissary. ... (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 (d) <b>The Director may use the net proceeds of the CCF for inmate and detainee improvement.</b>



## § 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'hāgan Guāhan 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'hāgan Guāhan 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'hāgan Guāhan 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'hāgan Guāhan 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.

25



## § 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.

26



## § 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:</p> <p>(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</p> <p>(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.


27



## § 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.


28



## § 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><b>§ 90113. Procedures for Transfers of Inmates.</b></p> <p>Whenever the Director determines that an inmate be recommended for transfer to a correctional institute outside of Guam, <b>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.</b></p>


29



## § 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	


30



## § 90.47.05

Section	Recom.	Suggested change
<p>§ 90.47.05. Same: Appeal from Determination. 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	

31



## § 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><b>§ 90105. General Powers and Duties of Director.</b></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>

32



## § 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.

33



## 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.

34



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

Section	Recom.	Suggested change
§ 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.	No change	Renumber to § 90201
§ 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.	Amend	§ 90202. Compliance to §§ 90108 and 90109. 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.

35



## 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

36



## 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

37



## 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.

38



## 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.

39



## 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.

40



## 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.

41



## 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.

42



## § 90.100 [renumber to § 90113]

Section	Recom.	Suggested change
§ 90.100. [Untitled Section]. 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.	No change	<b>§ 90113. Transfers Pursuant to Treaty.</b> 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.

43



## 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

44



## 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

45



## 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. I. 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 (NCHCS), 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.

46



## § § 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.

47



## 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. I. 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.

48



## 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.

49



## 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

50




## 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

51


# ATTACHMENT 2 - CRIMES AGAINST PERSONS PRESENTATION



**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 or 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)



AGGRAVATED MURDER	MURDER	MANSLAUGHTER
(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).	(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.	(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.

5



## 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. I CS
- **Whether there is sufficient mental state? C.f. §4.30 (c) reckless vs. proximate (legal)/indirect cause/accident; sufficient mental state?**

6



## 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 to 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.

7



## 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,

8



## 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.

9



## 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.

10



## Issues reviewed but no Subcommittee recommendations

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

11



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

12



# Judiciary of Guam

Guam Criminal Law and Procedure Review Commission  
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910  
Tel: (671) 475-3278 • Fax: (671) 475-3140



HON. JONATHAN R. QUAN  
CHAIRMAN

ANDREW SERGE QUENGA  
EXECUTIVE DIRECTOR

HON. ROBERT J. TORRES  
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA, III  
PRESIDING JUDGE

## **GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION (CLRC)** **PLENARY MEETING | Thursday, December 07, 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 meeting was called to order by Chairman Quan 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 are 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. Maria T. Cenzone, Present on Zoom

Hon. Anita A. Sukola, Present on Zoom

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

DOC Director Fred Bordallo or Designee Maj. Antone Aguon, (Present via Zoom after Roll Call)

Chief of Police Stephen Ignacio or Designee Maj. Manny Chong, Present via Zoom

Atty. Joseph McDonald, (No response during Roll Call)

Atty. Randall Cunliffe, (later indicated presence via Zoom after Roll Call)

Mr. Monty McDowell, Present via Zoom, Office in Harmon

Atty. Stephen Hattori or Designee Atty. John Morrison, Present, Judiciary of Guam

AG Douglas Moylan or Designee Asst. AG Steven Coaty, Present, Judiciary of Guam

Atty. Michael Phillips, (No response during Roll Call)

Ms. Valerie Reyes, (No response during Roll Call)

Atty. Christine Tenorio, (No response during Roll Call)

Atty. Phillip Tydingco, Present, Judiciary of Guam

The Judiciary of Guam is an equal opportunity provider and employer.

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 October 05, 2023 Fifth Plenary Meeting Minutes**

Chairman Quan indicated that the approval of the minutes of the Plenary Meeting on October 05, 2023 will be tabled until the next Plenary Meeting.

**V. OLD BUSINESS**

**A. Membership Update**

Chairman Quan greeted new members: Judge Maria Cenzone, Assistant Attorney General Steven Coaty and GPD Major Manny Chong.

Director Quenga introduced the CLRC's new staffers Rennae Meno and Gloria Cruz who are available to assist subcommissions in the research of statutes and other legal materials.

**B. Third Quarter Report**

Director Quenga reported that the Third Quarter Report was submitted and is available online and encouraged members to review it as it contains recommended changes from previous plenary meetings.

**C. Subcommittee on Criminal Procedure: Continued Discussion of Chapters Presented at the August 31, 2023 Plenary Meeting for Consideration and Approval**

Subcommission Chair Judge Sukola introduced Director Quenga to give the presentation.

Director Quenga continued the discussion of chapters presented at the August 31, 2023 Plenary Meeting.

Director Quenga noted that chapters involving corrections and law enforcement were referred to other subcommissions: Chapter 71 was referred to Crimes Against Persons; Chapters 80-82 and 84-88 were referred to DOCO; Chapters 89 and 93 were referred to both DOCO and Crimes Against Persons.

Director Quenga focused on 9 GCA §§ 71.20, 81.10 and 82.20, which were tabled for further discussion at the August 31 Plenary Meeting.

Director Quenga presented updates and outlined proposed revisions in a PowerPoint presentation (Attachment 1 hereto) and the Subcommission's recommendations:

- **9 GCA Chapter 71 (The Guam Gun-Free School Zone Act of 2004)**

- § 71.20 (Definitions). Recommend striking subsection (c) as the term “concealed firearm” is not used in the chapter. Recommend not expanding the definition firearm to include airguns and other weapons after review of the legislative intent in PL 27-116 (which enacted Ch. 71) and DOE Board policies on deadly or dangerous weapons.
- §§ 71.30, 71.40 and 71.61. Recommend amending with non-substantive clarifications.
- § 71.50. Recommend amending to remove redundancy. Discussion and clarification regarding firearms on community college and university campuses, including exceptions for firing ranges and law enforcement.
- § 71.70. Recommend deleting the section as unnecessary. This definition of “loaded” firearm is unnecessary as there is no distinction to unloaded firearm.
- § 71.80. Recommend amending to delete outdated time requirements.
- §§ 71.81, 71.82 and 71.83. Recommend consolidation into one exemption section.
- **9 GCA Chapter 81 (Reduction of Sentences)**
  - § 81.10(a). Recommend amending to clarify that work inside DOC is included in work credit.
  - § 81.10(f). Tabled for further discussion by DOCO.
- **9 GCA Chapter 82 (Loss and Restoration of Rights Incident to Conviction or Imprisonment)**
  - § 82.20(a). Recommend amending to include “and physically incarcerated” to clarify that the disqualification from voting is limited to persons who are physically committed.

Chairman Quan summarized the recommendations as follows:

Chapter 71

§ 71.20 – Amend.

§ 71.30 – Amend.

§§ 71.40, 71.50 & 71.61 – Amend.

§ 71.70 – Repeal

§ 71.80 – Amend

§ 71.81, 71.82 & 71.83 – Amend (Consolidate)

§ 81.10(a) – Amend

§ 81.10(f) – Table

§ 82.20 – Amend

Chairman Quan called for a vote and without objection the recommendations were moved to the final reading file.

Judge Cenzone abstained from voting on amendments for which she was not present during discussions.

**D. Subcommittee on Crimes Relating to Property: Continued Discussion of Chapters Presented at the August 31, 2023 Plenary Meeting for Consideration and Approval**

Chairman Quan tabled this presentation to provide more time for review by the Subcommittee.

**VI. NEW BUSINESS**

**A. Subcommittee on Drugs & Other Criminal Offenses: Presentation of Additional Recommendations for Discussion and Approval**

Chairman Quan noted that Judge Cenzone will be taking the chair position for this subcommittee, but the presentation will be made by the Acting Chair Compiler of Laws Cepeda.

Acting Chair Cepeda presented a proposed new provision on Correctional Medical Clinics, 9 GCA § 90106, in a PowerPoint presentation (Attachment 2 hereto).

Acting Chair Cepeda noted this new provision was at the suggestion of former Chair Judge Elizabeth Barrett-Anderson based on her work with Atty Kat Fokas and covers health care at DOC. Acting Chair requested members to review the new section for discussion at the next Plenary Meeting.

Chairman Quan stated this section will be tabled to allow Judge Cenzone the opportunity to work with her subcommittee. We will await it being brought forward at the next plenary meeting.

**B. Notice of Next Meeting: Thursday, February 08, 2024, Noon (Tentative)**

Chairman Quan noted the next plenary meeting will be scheduled for Thursday, February 8, 2024 at 12 noon.

**VII. Communications**

None.

**VIII. Public Comments**

None.

**IX. Adjournment**

Chairman Quan adjourned the meeting without objection at.

Respectfully submitted this 29<sup>th</sup> day of February, 2024.


\_\_\_\_\_  
Andrew S. Quenga, Executive Director

As set out above, the minutes of the December 07, 2023 meetings were approved by the CLRC at the February 29, 2024 meeting.

\_\_\_\_\_  
Magistrate Judge Jonathan R. Quan, Chairman

Dated: \_\_\_\_\_

# ATTACHMENT 1 - CRIMINAL PROCEDURE SUBCOMMISSION PRESENTATION




## Report of the Subcommittee on Criminal Procedure

Continued Discussion of Chapters Presented at the August 31, 2023 Plenary Meeting for Consideration and Approval

Members: Hon. Anita A. Sukola (Chair), Atty Steven Coaty, Atty Brian Eggleston (ex-officio), Atty Lenny Rapadas (ex-officio), Executive Director Serge Quenga (ex-officio)

1



Recap. To expedite review of Title 9, the Criminal & Correctional Code, the Commission Chairman assigned our Subcommittee these Title 9 chapters to review:

Chapter	Title of Chapter
71	The Guam Gun-Free School Zone Act of 2004
80	Disposition of Offenders
81	Reduction of Sentences
82	Loss and Restoration of Rights Incident to Conviction or Imprisonment
84	Rehabilitative and Development Program
85	Territorial Parole Board
86	Compensation for Damages from Criminal Activities
87	Victim Notification
88	Criminal Justice Substance Abuse Act
89	Crimes Against Minors and Sex Offender Registry
93	Criminal Sexual Conduct Assessment and Rehabilitation Act


2



## REFERRALS TO OTHER SUBCOMMISSIONS

Chapter	Title of Chapter	Referred to
71	The Guam Gun-Free School Zone Act of 2004	PERSONS
80	Disposition of Offenders	DOCO
81	Reduction of Sentences	DOCO
82	Loss and Restoration of Rights Incident to Conviction or Imprisonment	DOCO
84	Rehabilitative and Development Program	DOCO
85	Territorial Parole Board	DOCO
86	Compensation for Damages from Criminal Activities	DOCO
88	Criminal Justice Substance Abuse Act	DOCO
89	Crimes Against Minors and Sex Offender Registry	DOCO, PERSONS
93	Criminal Sexual Conduct Assessment and Rehabilitation Act	DOCO, PERSONS

3



Our Subcommittee presented our initial review of these Title 9 chapters at the August 31 Plenary Meeting. Our recommendations were voted on or tabled for further discussion. Today, we will update the Commission on the sections that were tabled:

9 GCA §§ 71.20, 81.10 and 82.20

4



**9 GCA CHAPTER 71 – THE GUAM GUN-FREE SCHOOL ZONE ACT OF 2004.  
9 GCA § 71.20. Definitions.**

- The discussion at the August 31 meeting was on expanding the definition of firearm to include air rifles and bb guns, and possibly to include other deadly or dangerous weapons.
- However, in reviewing the Guam Legislature’s intent in Section 1 of Public Law 27-116, which enacted the Guam Gun-Free School Zone Act, only firearms were intended to be covered. Section 1 states:

Legislative Findings. 1 *Liheslaturan Guahan* finds that in order to safeguard our school children, and our school communities, it is essential that firearms are not permitted in our schools without a justifiable reason. Recent incidents in our schools indicate that firearms are finding their way onto our school campuses and this practice must stop. Anyone carrying a firearm onto or near a school campus should have a legitimate reason and must obtain the appropriate clearance. This Act will insure [sic] that anyone found inappropriately carrying a firearm onto or near a school will be punished. Further, this Act will serve as a deterrent to carrying weapons into or near our schools.

- We are not convinced that the definition of firearm should be expanded.



## DOE Policies on Deadly or Dangerous Weapons

- DOE Board Policy 425
- DOE Student Conduct Procedural Manual (SOP # 1200-018)
- “Any student, while at a school site or riding on a school bus is found possessing an instrument which the Principal or his designee determines to be a deadly weapon shall be suspended immediately and a complete investigation shall be conducted.”
- Provided to Persons Subcommittee.



## Other Revisions to Chapter 71

**§ 71.20. Definitions.**

As used in this Chapter, the following definitions shall apply:

(a) “School zone” means an area in, or on the grounds of, a public or private school providing instruction in early childhood, kindergarten or grades 1 to 12, inclusive.

(b) “Firearm” shall mean as defined in 10 GCA § 60100.

~~(c) “Concealed firearm” shall mean as defined in 9 GCA § 60108(e).~~

[Comment. Recommend striking “Concealed Firearm” as this term is not used this chapter.]



**§ 71.30. Person Not Allowed to Possess Firearms.**

Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in ~~paragraph (a) of Subdivision~~ § 71.20(a) ~~of this Chapter~~, shall be punished as specified in ~~Subdivision~~ § 71.60

[Comment. Non-substantive clarifications.]



**§ 71.40. Prohibition on Discharge of Firearm.**

It shall be unlawful for any person to discharge, or attempt to discharge, a firearm in a school zone, as defined in ~~paragraph (a) of Subdivision § 71.20(a) of this Chapter.~~ The prohibition contained in this ~~Subdivision~~Section does not apply to the discharge of a firearm if the firearm is discharged in an area that is designated as a shooting range at a University or College.

[Comment. Non-substantive clarifications.]



**§ 71.50. Firearms Prohibited on University or College Property.**

~~(a)~~ It shall be unlawful for any person to bring or possess a ~~loaded~~ firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority. Notwithstanding § 71.80, a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this Section.

~~(b) It shall be unlawful for any person to bring or possess a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority. Notwithstanding Section § 71.80, a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this Section.~~

[Comment. Subsections (a) and (b) are the same except for the word “loaded” in (a). Recommend deletion of “loaded” in (a) and deletion of (b) in its entirety.]



**§ 71.61. Information for Sentencing.**

Except as otherwise provided in 9 GCA Chapter 80 ~~of Title 9 of the Guam Code Annotated,~~ no limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which the Superior Court of Guam may receive and consider for the purpose of imposing an appropriate sentence under this Chapter.

[Comment. Non-substantive clarifications.]



**~~§ 71.70. What Constitutes a Loaded Firearm.~~**

~~For purposes of this Chapter, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.~~

[Comment. Recommend deletion of this section. Section 71.30 provides the central prohibition against bringing or possessing a firearm in a school zone and does not distinguish between “loaded” or “unloaded” firearms. Also, with the recommended changes to § 71.50 above, this § 71.70 is not necessary.]



**§ 71.80. Notice.**

~~(a)~~ The Department of Education and other entities covered by this Chapter shall post permanent signs with large visible lettering stating at a minimum, "Warning this is a Gun-Free Zone" at the main entrances of the covered facilities within their control ~~on or before January 1, 2005~~. This Section does not require that notice be posted regarding the proscribed conduct for the purposes of prosecution of any violation of this Act.

~~(b) The Guam Police Department within sixty (60) days of the effective date of this Act shall implement a public relations campaign to inform the general public of its provisions.~~

[Comment. Recommend deletion of (b) as it is outdated.]



**§ 71.81. Chapter Not Applicable to Peace Officers and Military.**

~~(a)~~ This Chapter does not apply to a duly appointed peace officer as defined in ~~8 GCA § 5.55, Article 2, Chapter 5, Title 9, Guam Code Annotated~~, a full-time paid peace officer of another state or the Federal government who is carrying out official duties while in Guam, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of Guam or of the United States who is engaged in the performance of his or her duties, or an armored vehicle guard engaged in the performance of his or her duties.

**§ 71.82. Not Applicable to Security Guards.**

~~(b)~~ This Chapter does not apply to an on-duty security guard authorized to carry a loaded firearm, provided the security guard is an employee of an entity contracted by the school for security purposes.

**§ 71.83. Not Applicable to Existing Shooting Ranges.**

~~(c)~~ This Chapter does not apply to an existing shooting range at a public or private school or university or college campus.

[Comment. Recommend consolidating these three sections into one exemption section.]



Chapter 71 recommendations submitted for approval, or if further discussion is desired, will defer further action to the Subcommittee on Crimes Against Persons.



**9 GCA CHAPTER 81 – REDUCTION OF SENTENCES  
9 GCA § 81.10. Work Credit.**

- This section provides the opportunity for a person in custody to reduce his or her sentence by work credit. Our Subcommittee has referred this Chapter 81 to the Subcommittee on Drugs and Other Criminal Offenses, which has the Department of Corrections as a member.
- At the August 31 Plenary Meeting Director Bordallo requested a change to make it clear that work inside the Department of Corrections would be included for Work Credit.
- We recommend the following change to § 81.10 (a):
  - (a) Any person in custody may work at cleaning up littered areas, parks and beaches or other types of work details beneficial to the island of Guam, including work details within the Department of Corrections, and including participation in a pre-apprenticeship program authorized through the Guam Registered Apprenticeship Program as provided in Article 1, Chapter 10, Title 22, Guam Code Annotated; ...



### 9 GCA § 81.10 (Continued)

- Also at the August 31 Plenary Meeting, Attorney Bucky Brennan raised the issue that work credit under this Section is essentially not available to first time DWI offenders who generally serve 48 hours by plea agreement. He suggested the following change to § 81.10(f) to open it up to first time offenders:

§ 81.10(f) This Section shall apply to any person who is convicted ~~for the first time~~ of Driving Under the Influence, as defined by 9 GCA § 92101(a), et seq.

- Presented for information only. Recommend to defer to DOCO for further discussion.



### 9 GCA CHAPTER 82 – LOSS AND RESTORATION OF RIGHTS INCIDENT TO CONVICTION OR IMPRISONMENT

#### § 82.20. JURY OR VOTING DISQUALIFICATION FOR DURATION OF SENTENCE ONLY

- At the August 31 Plenary Meeting, Attorney John Morrison raised the possibility that under 9 GCA § 82.20, a convicted person might be absolutely prohibited from voting in an election. However, § 82.20 provides that a convicted person “committed under a sentence of imprisonment” is disqualified from voting. Although this language might be enough to limit the prohibition to persons actually imprisoned, we recommend adding the language here to avoid conflicts:

§ 82.20. Jury or Voting Disqualification for Duration of Sentence Only.

Notwithstanding any other provision of law, a person who is convicted of a crime shall be disqualified:


(a) from voting in a primary or general election if and only so long as he is committed under a sentence of imprisonment and physically incarcerated; and

- Submitted for approval. If further discussion, defer to DOCO for further action.



Chapter number, name	Section	No-Change	AMEND	REPEAL	REPEAL & RE-ENACT	OTHER
<b>Crim Pro Subcommission</b>						
71 - Gun Free School Zone						
	§71.20		Amend			
	§71.30		Amend			
	§71.40		Amend			
	§71.50		Amend			
	§71.61		Amend			
	§71.70			Repeal		
	§71.80		Amend			
	§71.81		Amend			Consolidate
	§71.82					Consolidate
	§71.83					Consolidate
81 - Reduction of Sentences						
	§81.10(a)		Amend			
	§81.10(f)					Table
82 - Loss and Restoration of Rights						
	§82.20		Amend			

## ATTACHMENT 2 - DOCO SUBCOMMISSION PRESENTATION




**Report of the Subcommittee on  
Drugs and Other Criminal Offenses**

Presentation of Additional Recommendations for Discussion and Approval

Members: Hon. Maria T. Cenzon (Chair), Hon. Elizabeth Barrett-Anderson, Compiler of Laws Geri Cepeda, DOC Director Fred Bordallo, Atty Mike Phillips, Ms. Valerie Reyes, Atty Kat Siguenza

1




### Suggested new provision

**§ 90106. Correctional Medical Clinics.**

There are hereby established facilities within the Department of Corrections (DOC) designated as the "Correctional Medical and Dental Clinic" and the "Correctional Behavioral Health Clinic" to address and respond to the medical, dental and mental health needs of all inmates and detainees within the prison population based on standards and procedures recognized by the National Commission on Correctional Health Care and consistent with community standards of care to further ensure the constitutional rights of inmates and detainees to proper health care.

(a) All outpatient medical and dental clinical operations at the DOC Correctional Medical Clinic shall be under the general cognizance and authority of the Guam Memorial Hospital Authority (GMHA) to ensure delivery of services including, but not limited to providing a medical director; physician and nurse practitioner services; nursing services; clinic staff; pharmaceutical services; medical records services; medical supplies; and training, to the extent necessary to satisfy this section those services set forth in a cooperative agreement between GMHA and DOC.

2




### Suggested new provision

(b) All outpatient mental health services operations at the DOC Correctional Behavioral Health Clinic shall be under the general cognizance and authority of Guam Behavioral Health & Wellness Center (GBHWC) to ensure delivery of services including, but not limited to providing a mental health director, psychiatric physician and clinical psychology services, nursing services; clinic staff; records services; supplies; and training, to the extent necessary to satisfy this section those services set forth in a cooperative agreement between GBHWC and DOC.

(c) The DOC, GMHA, and GBHWC shall annually submit sufficient budgetary justification and appropriation requests to fund all operations pursuant to the continuing cooperative agreements between the DOC and GMHA.

(d) DOC and GBHWC. GMHA and GBHWC shall deliver health care services at the Correctional Medical Clinic and Correctional Behavioral Health Clinic, respectively, at the most economical costs, implement best practices, and promote financial accountability to DOC.



### Suggested new provision

(1) GMHA and GBHWC shall provide written reports to DOC one month after each fiscal quarter detailing services rendered and supplies used during the previous quarter, including applicable costs and administrative fees. The system for payment by DOC to GMHA and GBHWC shall be established with the Governor's Office, the Bureau of Budget Management & Research (BBMR), and the Department of Administration (DOA) to ensure GMHA and GBHWC has a regular commitment of funding secured solely and exclusively for paying GMHA and GBHWC on time for health care services, medical supplies, and for the timely payment to pharmaceutical vendors to prevent any future risks of credit hold.

(2) Allotments shall be made to GMHA and GBHWC in advance of services rendered and medical and pharmaceutical supplies, based on the previous fiscal year budget, and adjusted for any under-utilization or over-utilization from the previous fiscal year. Quarterly allotments shall be released on October 1, January 1, April 1, and July 1, of each fiscal year.

(3) GMHA and GBHWC shall submit to DOC expenditures statements post fiscal year that certify funds were spent in accordance with actual allocations.

4



# **GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION**

Plenary Meeting  
February 29, 2024  
12:00 p.m.



# GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION

Plenary Meeting  
February 29, 2024  
12:00 p.m.



## Agenda

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES October 5, 2023, December 7, 2023
- V. OLD BUSINESS
  - A. Fourth Quarter Report
  - B. Subcommittee on Drugs & Other Criminal Offenses: Continued Discussion of Proposed 9 GCA § 90106 (Correctional Medical Clinics) for Consideration and Approval
  - C. Subcommittee on Crimes Relating to Property: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
- VI. NEW BUSINESS
  - A. Subcommittee on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - B. Notice of next meeting: Thursday, April 4, 2024, Noon (Tentative)
- VII. Communications
- VIII. Public Comment
- IX. Adjournment



## Report of the Subcommittee on Drugs and Other Criminal Offenses

Proposed 9 GCA § 90106  
Correctional Medical Clinics

Members: Hon. Maria T. Cenon (Chair), Hon. Elizabeth Barrett-Anderson, Compiler of Laws Geri Cepeda, DOC Director Fred Bordallo, Atty Mike Phillips, Ms. Valerie Reyes, Atty Kat Siguenza



## Suggested new provision

### **9 GCA § 90106. Correctional Medical Clinics.**

There are hereby established facilities within the Department of Corrections (DOC) designated as the "Correctional Medical and Dental Clinic" and the "Correctional Behavioral Health Clinic" to address and respond to the medical, dental and mental health needs of all inmates and detainees within the prison population based on standards and procedures recognized by the National Commission on Correctional Health Care and consistent with community standards of care to further ensure the constitutional rights of inmates and detainees to proper health care.

(a) All outpatient medical and dental clinical operations at the DOC Correctional Medical Clinic shall be under the general cognizance and authority of the Guam Memorial Hospital Authority (GMHA) to ensure delivery of services including, but not limited to providing a medical director; physician and nurse practitioner services; nursing services; clinic staff; pharmaceutical services; medical records services; medical supplies; and training, to the extent necessary to satisfy this section those services set forth in a cooperative agreement between GMHA and DOC.



## Suggested new provision

(b) All outpatient mental health services operations at the DOC Correctional Behavioral Health Clinic shall be under the general cognizance and authority of Guam Behavioral Health & Wellness Center (GBHWC) to ensure delivery of services including, but not limited to providing a mental health director, psychiatric physician and clinical psychology services, nursing services; clinic staff; records services; supplies; and training, to the extent necessary to satisfy this section those services set forth in a cooperative agreement between GBHWC and DOC.

(c) The DOC, GMHA, and GBHWC shall annually submit sufficient budgetary justification and appropriation requests to fund all operations pursuant to the continuing cooperative agreements between the DOC and GMHA.

(d) DOC and GBHWC. GMHA and GBHWC shall deliver health care services at the Correctional Medical Clinic and Correctional Behavioral Health Clinic, respectively, at the most economical costs, implement best practices, and promote financial accountability to DOC.



## Suggested new provision

(1) GMHA and GBHWC shall provide written reports to DOC one month after each fiscal quarter detailing services rendered and supplies used during the previous quarter, including applicable costs and administrative fees. The system for payment by DOC to GMHA and GBHWC shall be established with the Governor's Office, the Bureau of Budget Management & Research (BBMR), and the Department of Administration (DOA) to ensure GMHA and GBHWC has a regular commitment of funding secured solely and exclusively for paying GMHA and GBHWC on time for health care services, medical supplies, and for the timely payment to pharmaceutical vendors to prevent any future risks of credit hold.

(2) Allotments shall be made to GMHA and GBHWC in advance of services rendered and medical and pharmaceutical supplies, based on the previous fiscal year budget, and adjusted for any under-utilization or over-utilization from the previous fiscal year. Quarterly allotments shall be released on October 1, January 1, April 1, and July 1, of each fiscal year.

(3) GMHA and GBHWC shall submit to DOC expenditures statements post fiscal year that certify funds were spent in accordance with actual allocations.



## Subcommittee on Crimes Relating to Property Update

Guam Criminal Law Review and Procedure Commission

February 29, 2024

Subcommittee Chairperson: Phillip J. Tydingco, Esq.

Subcommittee Members: F. Randall Cunliffe, Esq., Mr. Monty McDowell, William B. Brennan, Esq.



### Preliminary Review Completed (by Chapter)

- 9 GCA Chapter 32 (Financial Exploitation of Elderly)
- 9 GCA Chapter 34 (Arson, Negligent Burning, Criminal Mischief)
- 9 GCA Chapter 37 (Burglary)
- 9 GCA Chapter 40 (Robbery)
- 9 GCA Chapter 43 (Theft and Related Offenses)
- 9 GCA Chapter 46 (Forgery, Fraudulent Practices & Telephone Records)
- 9 GCA Chapter 47 (Trademark Counterfeiting Act)
- 9 GCA Chapter 48 (Notification of Breaches of Personal Information)
- 9 GCA Chapter 70 (Miscellaneous Crimes)

### Chapters Remaining

- 9 GCA Chapter 4 (General Principles of Liability)
- 9 GCA Chapter 13 (Attempt, Solicitation, Conspiracy)
- 9 GCA Chapter 49 (Government Bribery, Other Unlawful Influence and Related Offenses)
- 9 GCA Chapter 69 (Antitrust Law)
- 10 GCA Chapter 60 (Firearms)



## Items for Today

- Offense Grading Recommendations from August 31, 2023 Meeting
- 9 G.C.A. Chapter 70 Recommendations

9



## 9 GCA Chapter 43 Theft Grading

Offense Level (Guam)	Existing Statute	Recommended Change	Current Sentence (enhancements in other statutes), fines, probation/parole, restitution also governed by statute
<b>Violation</b>			
<b>Petty Misdemeanor</b>	\$0 - \$49.99	\$0-\$499.99	0-60 days
<b>Misdemeanor</b>	\$50.01-\$499.99	\$500.00-\$2,499.99	0-1 year
<b>1<sup>st</sup> Degree Felony</b>	\$500.01-\$1,499.99	\$2,500.00-\$4,999.99	0-5 years (9 GCA 80.30), first offender 0-3 years (80.31)
<b>2<sup>nd</sup> Degree Felony</b>	> \$1,500.00	≥ \$5,000.00	5-10 years (9 GCA 43.20), mandatory minimum except for first time felony and theft offender in which case 0-5 years

### California Theft (Cal Penal Code § 484-502.9)

**Grand Theft** – (487) (a) money, labor, real property or personal property taken is of a value exceeding \$950.00, except; also grand theft specific circumstances/items regardless of value

**Petty Theft** – value less than \$950.00

Offense Level (Ca) 489 and 1170(b)	Sentencing Factor	Sentence by statute (with separate provisions for aggravating and mitigating sentence)
<b>Grand Theft</b>	If theft involves firearm	16 months, two or three years
<b>Grand Theft</b>	Certain animal carcasses	Not exceeding one year, fine of \$5,000 or both
<b>Grand Theft</b>	All others	Jail not exceeding one year if misdemeanor or if felony – 16 months, two years or three years jail
<b>Petty Theft</b>	Less than \$950	Up to six (6) months jail, \$1,000.00

10



## 9 GCA Chapter 43 Theft Grading

Offense Level (Guam)	Existing Statute	Recommended Change	Current Sentence (enhancements in other statutes), fines, probation/parole, restitution also governed by statute
<b>Violation</b>			
<b>Petty Misdemeanor</b>	\$0 - \$49.99	\$0-\$499.99	0-60 days
<b>Misdemeanor</b>	\$50.01-\$499.99	\$500.00-\$2,499.99	0-1 year
<b>1<sup>st</sup> Degree Felony</b>	\$500.01-\$1,499.99	\$2,500.00-\$4,999.99	0-5 years (9 GCA 80.30), first offender 0-3 years (80.31)
<b>2<sup>nd</sup> Degree Felony</b>	≥ \$1,500.00	≥ \$5,000.00	5-10 years (9 GCA 43.20), mandatory minimum except for first time felony and theft offender in which case 0-5 years

### Hawaii - By Degree

Offense Level (HI)	Sentencing Factor	Sentence by statute (statutory, with separate provisions for aggravating and mitigating sentence) (Title 37 Section 706 distribution of convicted Defendants)
<b>1st Degree (708-830.5)</b>	Property or services exceeds \$20,000.00, a firearm, dynamite or other explosive, property or services during emergency period, property from person 60 or older, property or services value exceeds \$750 from person 60 or older, motor vehicle (Class B Felony)	10 years
<b>2<sup>nd</sup> Degree (708-831)</b>	Theft of property from another, or value of property or services exceeds \$750, other specific products (Class C Felony), first offender minimum sentence plus restitution	5 years
<b>3<sup>rd</sup> Degree (708-832)</b>	Theft of property or services exceed \$250, or gas, diesel other petroleum value not exceeding \$750 (misdemeanor)	1 year
<b>4<sup>th</sup> Degree (708-833)</b>	Theft of property or services not in excess of \$250 (petty misdemeanor)	30 days
<b>Shoplifting</b>	Shoplifting also incurs statutory civil liability	

11



## 9 GCA Chapter 43 Theft Grading

Offense Level (Guam)	Existing Statute	Recommended Change	Current Sentence (enhancements in other statutes), fines, probation/parole, restitution also governed by statute
<b>Violation</b>			
<b>Petty Misdemeanor</b>	\$0 - \$49.99	\$0-\$499.99	0-60 days
<b>Misdemeanor</b>	\$50.01-\$499.99	\$500.00-\$2,499.99	0-1 year
<b>1<sup>st</sup> Degree Felony</b>	\$500.01-\$1,499.99	\$2,500.00-\$4,999.99	0-5 years (9 GCA 80.30), first offender 0-3 years (80.31)
<b>2<sup>nd</sup> Degree Felony</b>	≥ \$1,500.00	≥ \$5,000.00	5-10 years (9 GCA 43.20), mandatory minimum except for first time felony and theft offender in which case 0-5 years

### New Jersey - By Degree

Offense Level (NJ) 2C:20	Sentencing Factor	Sentence by statute (statutory, with separate provisions for aggravating and mitigating sentence) (2C-43-6)
<b>Second degree</b>	Value greater than \$75,000.00, human remains, CS greater than 1 kg	5-10 years, up to \$150,000.00
<b>Third degree</b>	\$500-\$75,000.00, or firearm, motor vehicle, vessel, boat, horse, domestic companion animal, airplane, CS value less than \$75,000.00, public instrument, access device, other specific items	3-5 years, up to \$15,000.00 fine
<b>Fourth degree</b>	\$200-\$499.99	Not to exceed 18 months, up to \$10,000.00 fine

\*restitution and specific civil and criminal liability statute for shoplifting (shoplifting – less than \$200 disorderly offense, \$200-\$500 fourth degree, \$500-\$75,000.00 third degree, excess of \$75,000.00 second degree + civil liability)

12



## 9 GCA Chapter 34 Criminal Mischief Grading

- Recommend deletion of Subsection 34.60(a) to clarify punishment is based on offense grading value only
- Recommend amendment to offense grading value for Criminal Mischief:

Offense Level	Existing Statute	Recommended Change
Violation	\$0.01 - \$24.00	\$0.00 - \$49.99
Petty Misdemeanor	\$24.00 - \$49.99	\$50.00 - \$499.99
Misdemeanor	\$50.00 - \$499.99	\$500.00 - \$2,499.99
3 <sup>rd</sup> Degree Felony	≥ \$500.00	\$2,500.00 - \$4,999.99
2 <sup>nd</sup> Degree Felony	-	≥ \$5,000.00

13



## 9 GCA Chapter 34 Criminal Mischief Grading

Offense Level (Gu)	Existing Statute	Recommended Change
Violation	\$0.01 - \$24.00	\$0.00 - \$49.99
Petty Misdemeanor	\$24.00 - \$49.99	\$50.00 - \$499.99
Misdemeanor	\$50.00 - \$499.99	\$500.00 - \$2,499.99
3 <sup>rd</sup> Degree Felony	≥ \$500.00	\$2,500.00 - \$4,999.99
2 <sup>nd</sup> Degree Felony	-	≥ \$5,000.00

### California – value of damage - Cal Pen Code 594

Offense Level (Ca)	Sentencing Factor	Sentence by statute (with separate provisions for aggravating and mitigating sentence)
Felony	Damage \$400 or more	16 months, one, two or three years, fine not more than \$10k, or if damage more than \$10k, fine up to \$50k
Misdemeanor	Damage less than \$400	One year in jail, fine of \$1,000
Misdemeanor	Damage less than \$400 but prior vandalism conviction or affixing graffiti	One year in jail, fine of not more than \$5,000

14



## 9 GCA Chapter 34 Criminal Mischief Grading

Offense Level (Gu)	Existing Statute	Recommended Change
Violation	\$0.01 - \$24.00	\$0.00 - \$49.99
Petty Misdemeanor	\$24.00 - \$49.99	\$50.00 - \$499.99
Misdemeanor	\$50.00 - \$499.99	\$500.00 - \$2,499.99
3 <sup>rd</sup> Degree Felony	≥ \$500.00	\$2,500.00 - \$4,999.99
2 <sup>nd</sup> Degree Felony	-	> \$5,000.00

### Hawaii - 708-823 (criminal property damage) - By Degree

Offense Level (Hi)	Sentencing Factor	Sentence by statute (statutory, with separate provisions for aggravating and mitigating sentence) (Title 37 Section 706 (Disposition of convicted Defendants))
1 <sup>st</sup> Degree (708-820)	Property of another by means other than fire, value exceeding \$20k, property during emergency, or certain equipment in excess of \$1500 (Class B Felony)	10 years
2 <sup>nd</sup> Degree (708-821)	Damage property of another in amount exceeding \$1500 To \$20k, specific property in value exceeding \$500 - \$1500 (Class C Felony)	5 years
3 <sup>rd</sup> Degree (708-822)	Damage property of another in amount exceeding \$500 to \$1499, or by widely dangerous means, or specific types of property (misdemeanor)	1 year
4 <sup>th</sup> Degree (708-823)	Damage property of another without consent (petty misdemeanor)	30 days
Agg Crim Property Damage (708-823.5)	Two convictions of first or second, separate misdemeanor, damages property of another without consent (misdemeanor)	1 year
Graffiti (708-823.6)	In addition to property damage crimes, sentenced to remove graffiti within 30 days of sentencing, community service for two years removing graffiti	

15



## 9 GCA Chapter 34 Criminal Mischief Grading

Offense Level (Gu)	Existing Statute	Recommended Change
Violation	\$0.01 - \$24.00	\$0.00 - \$49.99
Petty Misdemeanor	\$24.00 - \$49.99	\$50.00 - \$499.99
Misdemeanor	\$50.00 - \$499.99	\$500.00 - \$2,499.99
3 <sup>rd</sup> Degree Felony	≥ \$500.00	\$2,500.00 - \$4,999.99
2 <sup>nd</sup> Degree Felony	-	≥ \$5,000.00

### New Jersey (2C:17-3) – by pecuniary loss

- Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently in the employment of fire, explosives or other dangerous means listed . . . or
- Purposely, knowingly or recklessly tampers with tangible property of another so as to endanger person or property, including the damaging or destroying of a rental premises by a tenant in retaliation for institution of eviction proceedings.

Offense Level (NJ) 2C:20-2	Sentencing Factor	Sentence by statute (statutory, with separate provisions for aggravating and mitigating sentence) (2C:43-6)
Second degree	Pecuniary loss of \$2000 or more, or other specific property damage	5-10 years, up to \$150,000.00
Third degree	Pecuniary loss of \$500 to \$2000, or other specific property damage	3-5 years, up to \$15,000.00 fine
Fourth degree	Pecuniary loss of \$500 to \$2000, or other specific property damage	Not to exceed 18 months, up to \$10,000.00 fine

\*Graffiti also order for restitution, community service including removing

16



## 9 GCA Chapter 46 (Forgery, Fraudulent Practices & Telephone Records)

- Recommend amendment to offense grading values for dishonored checks (Section 46.30)

Offense Level	Existing Statute	Recommended Change
Violation	-	-
Petty Misdemeanor	≥ \$250.00	≥ \$500.00
Misdemeanor	\$250.01 - \$1,000.00	\$500.01 - \$2,499.99
3 <sup>rd</sup> Degree Felony	> \$1,000.00	\$2,500.00 - \$9,999.99
2 <sup>nd</sup> Degree Felony	-	≥ \$10,000.00

17



## 9 GCA Chapter 46 (Forgery, Fraudulent Practices & Telephone Records)

- Recommend amendment of offense grading values for fraudulent use of credit card Section 46.35(d):

Offense Level	Existing Statute	Recommended Change
Violation	-	-
Petty Misdemeanor	-	≥ \$500.00
Misdemeanor	≤ \$500	\$500.01 - \$2,499.99
3 <sup>rd</sup> Degree Felony	> \$500	\$2,500.00 - \$9,999.99
2 <sup>nd</sup> Degree Felony	-	≥ \$10,000.00

18



## 9 GCA Chapter 46 (Forgery, Fraudulent Practices & Telephone Records)

- Recommend amendment to offense grading values for Impersonation and Identity Theft crimes Section 46.80(c)

Offense Level	Existing Statute	Recommended Change
Violation	-	-
Petty Misdemeanor	-	≥ \$500.00
Misdemeanor	-	\$500.01 - \$2,499.99
3 <sup>rd</sup> Degree Felony	< \$5,000.00	\$2,500.00 - \$9,999.99
2 <sup>nd</sup> Degree Felony	≥ \$5,000.00	≥ \$10,000.00

19



## 9 GCA Chapter 46 (Forgery, Fraudulent Practices & Telephone Records)

- Recommend amendment to Section 46.103 to update offense grading values for Mortgage Fraud.

Offense Level	Existing Statute	Recommended Change
Violation	-	-
Petty Misdemeanor	-	-
Misdemeanor	\$300.01 - \$1,000.00	-
3 <sup>rd</sup> Degree Felony	\$1,000.00 - \$4,999.99	-
2 <sup>nd</sup> Degree Felony	≥ \$5,000.00	Mortgage Fraud

20



## 9 GCA Chapter 46 (Mortgage Fraud)

- Recommend amendment to Sections 46.102 and 46.103 to update offense grading for Mortgage Fraud to Second Degree Felony.

### 46.102 Mortgage Fraud.

- (a) A person commits the offense of mortgage fraud if the person does any of the following with the intent to defraud:
- (1) knowingly makes any material misstatement, misrepresentation, or omission during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, or any other party to the mortgage lending process;
  - (2) knowingly uses or facilitates the use of any material misstatement, misrepresentation, or omission, during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, or any other party to the mortgage lending process;
  - (3) files or causes to be filed with the Department of Land Management any document that the person knows contains a material misstatement, misrepresentation, or omission; or
  - (4) receives any proceeds or any compensation in connection with a mortgage loan that the person knows resulted from a violation of this Section.

(b) Notwithstanding any other administrative, civil, or criminal penalties, a person who violates Section 46.102(a) is guilty of a second degree felony.

### 46.103 Mortgage Fraud.

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

- (1) misdemeanor when the value is or exceeds Three Hundred Dollars (\$300) but is less than One Thousand Dollars (\$1,000);
  - (2) third degree felony when the value is or exceeds One Thousand Dollars (\$1,000) but is less than Five Thousand Dollars (\$5,000);
  - (3) second degree felony when the value is or exceeds Five Thousand Dollars (\$5,000);
  - (4) second degree felony when the object or purpose of the commission of an act of mortgage fraud is other than the obtaining of something of monetary value; and
  - (5) second degree felony when the object or purpose of the commission of an act of mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the value.
- (c) The determination of the degree of any offense under this Subsection (a) is measured by the total value of all property, money, or things obtained or sought to be obtained by a violation of §46.102(a) of this Chapter, except as provided in Subsections 46.102(a)(4) and (5).
- (b) Each residential or commercial property transaction offense under this part constitutes a separate violation.

21



## 9 GCA Chapter 32 (Financial Exploitation of Elderly and Individuals with Disabilities)

### Previously recommended repeal of entire Chapter

- Subcommittee Concerns: vulnerable victim sentencing enhancement and theft statute provide sufficient criminal prohibition; conflicting *mens rea* language throughout statute.

### Update February 2024:

- Subcommittee reviewing additional source and background material
- Potential Civil Cause of Action?
- Recommend to table this item pending further review

22



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to 7 GCA Section 70.15(h) in definition section of the "Protecting Animal Welfare and Safety (PAWS) Act or Pugua's Law."

### Section 70.15(h)

(h) Officer means a member of the Guam Police Department, a Mayor of Guam, an Animal Control Officer, a Conservation Officer, or any other person authorized by law by the Chief of the Guam Police Department or by the Director of the Department of Agriculture.

23



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to 7 GCA Section 70.20(b) and 70.15(j) of the "Protecting Animal Welfare and Safety (PAWS) Act or Pugua's Law" to clarify animal neglect is a violation as distinguished from "animal abuse" on next slide.

### Section 70.20 Animal Neglect

- (a) A person commits the offense of Animal Neglect if, except as otherwise authorized by § 70.65 of this Article, the person (1) intentionally or knowingly or recklessly fails to provide minimum care for an animal in the person's possession; or (2) recklessly or with criminal negligence causes physical injury to an animal in the person's possession.
- (b) Animal Neglect is a violation offense punishable by a fine of not more than Five Hundred Dollars (\$500) per offense.
- (c) Each act or omission in violation of Subsection (a) of this Section shall constitute a separate offense violation.

Recommend and clarifying "physical injury" definition in 70.15(j):

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

24



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to 7 GCA Section 70.20(b) of the "Protecting Animal Welfare and Safety (PAWS) Act or Pugua's Law" to clarify animal neglect on previous slide is a violation as distinguished from "animal abuse".

### Section 70.25 Animal Abuse

- (a) A person commits the crime of Animal Abuse if, except as otherwise authorized by § 70.65 of this Article, the person intentionally, ~~or knowingly, recklessly, or with criminal negligence:~~
- (1) causes physical injury to an animal;
  - (2) causes serious physical injury to an animal; or
  - (3) causes the death of an animal.
- (b) Animal Abuse under Subsection (a)(1) of this Section is a misdemeanor. Animal Abuse under Subsection (a)(2) or (a)(3) of this Section is a third degree felony.
- (c) Each act or omission in violation of Subsection (a) of this Section shall constitute a separate offense.

25



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to 7 GCA Section 70.35 of the "Protecting Animal Welfare and Safety (PAWS) Act or Pugua's Law".

### § 70.35. Animal Fighting

- (a) No person shall cause, sponsor, aid, abet, arrange, hold, or encourage any animal to fight, menace, or injure another animal for the purpose of sport, amusement, or pecuniary gain. ~~This Section does not apply to cockfighting that is authorized by law.~~
- (c) Any violation of Subsection (a) of this Section shall constitute Animal Fighting, which is a third degree felony.
- (d) ~~Notwithstanding any other provision of law, the penalty for a violation of Subsection (a) of this Section shall be confinement in a correctional facility in accordance with Article 2 of 9 GCA Chapter 90 and a fine of not less than Five Thousand Dollars (\$5,000) and no more than Fifteen Thousand Dollars (\$15,000), or both, per violation. Additionally, a Any person convicted of any violation of this Section may be subject to seizure of any personal property, including vehicles, and real property at which the animal fight was staged.~~

26



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to 7 GCA Section 70.50 of the "Protecting Animal Welfare and Safety (PAWS) Act or Pugua's Law".

### § 70.50. Animal Abandonment

- (a) A person commits the offense of Animal Abandonment if the person intentionally, knowingly, or recklessly leaves a domestic animal at a location without providing for the animal's minimum care as defined in § 70.10.1(g) of this Article.
- (b) ~~Animal Abandonment is a violation that shall be subject to a fine of not more than Five Hundred Dollars (\$500).~~
- (c) Each act in violation of Subsection (a) of this Section shall constitute a separate offense.

27



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Repeal of 7 GCA Section 70.55 of the "Protecting Animal Welfare and Safety (PAWS) Act or Pugua's Law".

### § 70.55. Failure of a Motorist to Render Aid to an Injured Animal.

- A person commits the offense of Animal Abandonment if the person intentionally, knowingly, or recklessly leaves a domestic animal at a location without providing for the animal's minimum care as defined in § 70.10.1(g) of this Article.
- (a) ~~(a) A person who, while operating a motor vehicle, knowingly injures or kills a cat, dog, or livestock, excluding chickens, shall stop and render such assistance as may be possible and safe to provide, and shall immediately report such injury or death to the animal's owner. In the event the owner cannot be ascertained and located, or it is unsafe to make contact with the animal's owner, the operator of the motor vehicle shall immediately report the accident and location to a peace officer or animal control officer.~~
- (b) ~~A violation of Subsection (a) of this Section shall be punishable by a fine of not more than Three Hundred Dollars (\$300) per offense.~~

28



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to of 7 GCA Section 70.60(a)(2) of the “Protecting Animal Welfare and Safety (PAWS) Act or Pugua’s Law”.

§ 70.60. Leaving Animals Unattended in Motor Vehicles; Penalty; Authority of Officers.

(a) For the purposes of this Section:

- (1) Vehicle means a car, truck, camper, trailer, or other form of transportation in which an animal can be transported.
- (2) Extreme temperature means an extremely cold or high temperature, inside or outside of a vehicle, that could endanger an animal’s health, safety, or well-being.



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to of 7 GCA Section 70.65(g)(2) and (3) of the “Protecting Animal Welfare and Safety (PAWS) Act or Pugua’s Law”.

§ 70.65. Defenses; Exceptions

(g) Sections 70.10 to 70.85 of this Article shall not apply to:

- ~~(2) cockfighting in a manner and at such times and places as are authorized by law;~~
- ~~(3) the proper killing of animals used for food, except for dogs and cats, in accordance with the law;~~



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to of 7 GCA Section 70.80 of the “Protecting Animal Welfare and Safety (PAWS) Act or Pugua’s Law”.

§ 70.80. Sentencing Provisions.

(g) Sections 70.10 to 70.85 of this Article shall not apply to:

(b) Evaluation & Treatment.

- (1) In addition to any other sentence it may impose, the court ~~shall~~ may order the defendant convicted of a felony crime under this Article to undergo a psychiatric, psychological, or mental health evaluation, and if warranted by the condition of the defendant, ~~shall~~ may order the defendant to undergo appropriate care or treatment.



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to of 7 GCA Section 70.320(c)(1) of the The Guam Social Host Act And Possession Of Cannabis By Persons Under Twenty-one (21) Years Of Age

§ 70.320. Intoxication of Persons Under the Age of Twenty-One.

(c) Any person who violates this Section:

- (1) shall be ~~guilty of a misdemeanor, punished by a fine of not more than Two Thousand Dollars (\$2,000) or by imprisonment for not more than one (1) year or both;~~



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to 7 GCA Section 70.330 of The Guam Social Host Act And Possession Of Cannabis By Persons Under Twenty-one (21) Years Of Age

§ 70.330. Possession of Cannabis by Persons Under Twenty one (21) Years of Age. Any person under twenty-one (21) years of age possessing cannabis shall be guilty of a ~~violation~~ ~~petty misdemeanor~~ and subject to a One Hundred Dollar (\$100.00) fine and suspension of their driver's license for twelve (12) months for the first offense and a Two Hundred-Fifty Dollar (\$250.00) fine and suspension of their driver's license for an additional twelve (12) months for each subsequent possession. Suspension of one's driver's license may be waived by the court and replaced with one hundred (100) hours of community service for each possession if the guilty individual can demonstrate financial or personal hardship resulting from the loss of his or her driving privileges. The violation of this Section and the resulting penalties prescribed herein are in addition to other violations of public law related to cannabis possession.



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Amendment to 7 GCA Section 70.420

§ 70.420. Jet Ski Operation, Tumon Bay and Pago Bay. No person shall operate a jet ski or water ski within the reef along Tumon Bay and Pago Bay ~~except that a jet ski may be operated in the channel to enter or exit Tumon Bay and Pago Bay.~~ This prohibition shall not apply to the use of jet ski for emergency rescue or for law enforcement purposes. Any person who violates this Section is guilty of a misdemeanor.



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Repeal of 9 GCA Section 70.430

§ 70.430. Unlawful Use of Telephone; Defined & Punished.  
(a) A person is guilty of unlawfully using a telephone when he:  
(1) refuses to relinquish immediately a party line or public telephone when informed that the party line or public telephone is needed for an emergency call to the Department of Public Safety, Armed Services Policy, Air Sea Rescue or for medical aid or ambulance service or  
(2) secures the use of a party line or public telephone by falsely stating that such line or telephone is needed for an emergency.  
(b) As used in this Section, party line means a subscriber's telephone circuit consisting of two (2) or more named telephone stations connected therewith, each station having a distinctive ring or telephone number.  
(c) As used in this Section, public telephone means a telephone available for public use.  
(d) As used in this Section, emergency means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.  
(e) Unlawfully using a telephone, as defined in Paragraph (1) of subsection (a) of this Section, is a misdemeanor. Otherwise, it is a violation.



## 9 GCA Chapter 70 (Miscellaneous Crimes)

Recommend Repeal of 9 GCA Section 70.450

§ 70.450. Blacklisting Employees.  
(a) If any person, agent, company, corporation, public official, or governmental agency, after having discharged any employee from his or its service, shall prevent or attempt to prevent by word or writing of any kind of untrue statement, or, in any manner, conceal or continue, by correspondence or otherwise by means of an untrue statement, to prevent, such discharged employee from obtaining employment with any other person, company, corporation or governmental agency, such person, agent, corporation or public official is guilty of a petty misdemeanor and shall be punished by a fine not exceeding five Hundred Dollars (\$500.00) for each violation; and such person, agent, company, corporation, elected or appointed public official, or governmental agency shall be liable in civil penal damages to such discharged person, to be recovered by civil action. This Section shall not be construed as prohibiting any person or agent of any company or corporation from furnishing in writing, upon request, to any other person, company or corporation to whom such discharged person or employee has applied for employment, a truthful statement of the reason for such discharge.  
(b) An employer, employee or other person, by threats of injury, intimidation or force, alone or in combination with others, may not prevent a person from entering into, continuing in or leaving the employment of any person, firm, governmental office/agency or corporation. Any person who violates this paragraph is guilty of a misdemeanor and shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) for each violation; and such person, agent, company, corporation, elected or appointed public official, governmental agency shall be liable in civil penal damages to such discharged person, to be recovered by civil action.



The Subcommittee on Crimes Related to Property continues its work and will finalize submit its finalized recommendations and worksheets for Commission Review.

## Thank you

Subcommittee Chairperson: Phil Tydingco

Subcommittee Members: F. Randall Cunliffe, Monty McDowell, William (Bucky) Brennan



## Crimes Against Persons Subcommittee Criminal Law & Procedure Review Commission

Members and ex officio members

GPD Chief Steve Ignacio  
GPD Major Manny Chong  
GPD Lt. Ron Taitano  
Public Defender Steve Hattori  
Dep. Public Defender John Morrison  
Assistant Attorney General Christine Tenorio  
Assistant Attorney General Sean Brown  
Attorney Joseph B. McDonald

### RECOMMENDATIONS FOR 9 GCA CHAPTERS 93, 91, 71, 40, 31, 19

PRESENTATION BY J. McDONALD  
SEVENTH PLENARY MEETING  
FEB. 29, 2024



## Crimes against Persons Subcommittee Update

- Seriatim communications to facilitate meetings
- Gloria Duenas assisting with research
- GPD Lt. Ron Taitano designated by Police Chief Steve Ignacio to replace Major Manny Chong
- Chapter by chapter review at each meeting



## OVERVIEW

Chapter	Sections	Recommendation
93	CSC Assessment and Rehabilitation Act	No action
91	Infant Child's Right to Life Act	No action
71	Gun Free School Zone Act	No action
40	Robbery	No action
31	31.30 Child Abuse	No action
19	19.60 Terrorizing	Amend



## Chapter 93 CSC Assessment and Rehabilitation Act

No action reported out. However, these statutes were scrutinized:

- § 93.20 Standardized Procedure
- § 93.30 Assessment Required
- § 93.35 Treatment and Testing Required
- § 93.50 Report to the Legislature



## § 93.20. Criminal Sexual Conduct Assessment: Standardized Procedure

(a) The Superior Court of Guam shall be the lead agency along with the Department of Corrections, the Guam Parole Board, the Guam Police Department, and the Guam Behavioral Health and Wellness Center (the Assessment Team) shall cooperate to develop and implement the following: (1) A standardized procedure for the assessment of individuals accused or convicted of sexual offenses for dangerousness and risk for recidivism. The assessment may include the use of physiological testing, in conjunction with a thorough psychiatric evaluation, comprehensive sexual history, and clinical expertise or such other test of the offender as deemed appropriate by the Assessment Team. The assessment procedure developed pursuant to this Section shall recommend treatment or rehabilitation that is appropriate to the needs of the particular offender and which is aimed at reducing dangerousness and risk of recidivism or shall indicate whether no treatment or rehabilitation is known or predictable that will reduce dangerousness or risk of recidivism. (2) A system of programs for treatment and rehabilitation of individuals convicted of criminal sexual conduct offenses which can be utilized by offenders who are placed on probation, incarcerated at the Department of Corrections, placed on parole, or placed in community corrections, or released on probation or parole, or discharged from prison.

(b) The procedures for treatment and rehabilitation required to be developed by Subsection (a) of this Section shall be implemented only to the extent monies are available; provided that, in all cases, persons referred or ordered to receive treatment or rehabilitation shall do so at their own expense, unless such person is indigent.

(c) The Superior Court of Guam, the Department of Corrections, the Guam Parole Board, the Guam Police Department, and the Guam Behavioral Health and Wellness Center shall cooperate to develop a schedule of fees sufficient to cover the costs of assessment, testing, and treatment as required by this Section. All persons referred or ordered to receive assessment, testing, or treatment shall be made to pay for such, in accordance with the fee schedule, except in such cases where the person is determined to be indigent, at which point the government of Guam may provide access to government funded or government contracted service providers, if available.



## § 93.30. Assessment Required for Convicted Felons and Criminal Sexual Conduct Offenders.

(a) A person convicted of a criminal sexual conduct felony committed on or after the effective date of this Act who is to be considered for probation, pre-sentence release, sentencing, or parole shall be required, as part of the pre-sentence or probation investigation, to submit to an assessment developed pursuant to §93.20(a)(1). The court shall order such person to comply with the recommendations of such assessment as a condition of probation, pre-sentence release, or parole, and as part of the sentence, at the person's own expense, unless such person is indigent, at which point the government of Guam may provide access to government funded or government contracted service providers, if available.

(b) Each person convicted of a criminal sexual conduct misdemeanor committed on or after the effective date of this Act shall be required to submit to an assessment developed pursuant to § 93.20(a)(1). The court shall order such person to comply with the recommendations of such assessment at the person's own expense, unless such person is indigent. If such person is sentenced to probation, such person shall be ordered to comply with the recommendations as a condition of probation at such person's own expense, unless such person is indigent, at which point the government of Guam may provide access to government funded or government contracted service providers, if available.

(c) The assessment required by Subsection (a) of this Section or the assessment required by Subsection (b) of this Section shall be at the expense of the person assessed, unless such person is indigent, at which point the government of Guam may provide access to government funded or government contracted service providers, if available.



## § 93.35. Sentencing and Parole of Felons: Parole of Felons

(a) Each person sentenced by the court for a criminal sexual conduct felony committed on or after the effective date of this Act shall be required, as part of any sentence, to undergo periodic assessment, treatment, and rehabilitation which is appropriate to such person based upon the recommendations of the assessment made pursuant to § 93.30 of this Chapter, or based upon any subsequent recommendations by the Department of Corrections, the Probation Office, the Parole Board or the Superior Court of Guam, whichever is appropriate. Any such testing or treatment shall be at such person's own expense, unless such person is indigent, at which point the government of Guam may provide access to government funded or government contracted service providers, if available.

(b) Each person convicted of a criminal sexual conduct felony who is placed on parole by the Guam Parole Board on or after the effective date of this Act, shall be required, as a condition of such parole, to undergo periodic testing and treatment that is appropriate to such person based upon the recommendations of the assessment made pursuant to § 93.30 of this Chapter, or any assessment or subsequent reassessment made regarding such person during his or her incarceration or any period of parole. Any such testing or treatment shall be at such person's own expense, unless such person is indigent, at which point the government of Guam may provide access to government funded or government contracted service providers, if available.



## § 93.50. Report to the Legislature

Upon enactment of this Act, the Assessment team led by the Superior Court of Guam, the Department of Corrections, the Guam Parole Board, the Guam Police Department, and the Guam Behavioral Health and Wellness Center shall jointly make and transmit an annual report to the Speaker of the Guam Legislature regarding the implementation of this Act; the standardized procedures developed pursuant to this Act; and the results of the programs created by this Act, including expected and actual effectiveness of the assessment, treatment, and rehabilitation in reducing levels of dangerousness or risk of recidivism of criminal sexual conduct offenders while incarcerated and on release



## Chapter 91 Infant Child Right to Life Act

- No action recommended.
  - Not what is on appeal to US SCT
  - Legislative policy call
- § 91.02. Legislative Findings and Purpose.
  - § 91.03. Definitions.
  - § 91.04. Requirements and Responsibilities.
  - § 91.05. Criminal Penalties.
  - § 91.06. Civil and Administrative Action.



## Chapter 71 Gun-Free School Zone Act

No action reported out: Legislative policy call.

These were our comments that leaned repeal:

- Already a proscription on weapons in government buildings
- Charged only in connection with other crimes, upon accidental discovery of or commission with, a gun
- Will not deter gun violence in schools

- § 71.20. Definitions.
- § 71.30. Person Not Allowed to Possess Firearms.
- § 71.40. Prohibition on Discharge of Firearm.
- § 71.50. Firearms Prohibited on University or College Property.
- § 71.60. Punishment.
- § 71.61. Information for Sentencing.
- § 71.70. What Constitutes a Loaded Firearm.
- § 71.80. Notice.
- § 71.81. Not Applicable to Peace Officers and Military.
- § 71.82. Not Applicable to Security Guards.
- § 71.83. Not Applicable to Existing Shooting Ranges.



## Chapter 40 Robbery

- No action recommended.
  - No adverse case law.
- § 40.10. 1st Degree Robbery
  - § 40.20. 2nd Degree
  - § 40.30. 3rd Degree
  - § 40.40. Definition of an Act.
  - § 40.50. No Defense of "Claim of Right"



## § 31.30 Child Abuse

Report out: no action.

§ 31.30. Child Abuse; Defined & Punished. (a) A person is guilty of child abuse when: (1) he subjects a child to cruel mistreatment; or (2) having a child in his care or custody or under his control, he: (A) deserts that child with intent to abandon him; (B) subjects that child to cruel mistreatment; or (C) unreasonably causes or permits the physical or, emotional health of that child to be endangered.

(b) Child abuse is a felony of the third degree when it is committed under circumstances likely to result in death or serious bodily injury. Otherwise, it is a misdemeanor.

(c) Voluntary surrender of physical custody of a newborn infant by a mother to authorized Safe Haven personnel pursuant to the provisions of the Newborn Infant Safe Haven Act, 19 GCA, Chapter 13, Article 5, is an absolute defense to prosecution for child abuse as a result of deserting that child with intent to abandon that child under Subsection (a)(2)(A) of this Section. (1) For purposes of this Subsection, "authorized Safe Haven personnel" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(a). (2) For purposes of this Subsection, "mother" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(d). (3) For purposes of this Subsection, "newborn infant" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(e).

2/29/2024

SEVENTH PLENARY, C49ES AGAINST PERSONS  
SUBCOMMITTEE

49



## § 31.30 Child Abuse

§ 31.30. Child Abuse; Defined & Punished. (a) A person is guilty of child abuse when: (1) he subjects a child to cruel mistreatment; or (2) he willfully causes or permits any child to suffer; (3) he inflicts upon a child unjustifiable physical pain or mental suffering; or (34) having a child in his care or custody or under his control, he: (A) deserts that child with intent to abandon him; (B) subjects that child to cruel mistreatment; or (C) he neglects that child, unreasonably causes or permits the physical or, emotional health of that child to be endangered; or (C) he neglects that child, unreasonably causes or permits the physical or, emotional health of that child to be endangered.

(b) Child abuse is a felony of the third degree when it is committed under circumstances likely to result in death or serious bodily injury. Otherwise, it is a misdemeanor.

(c) Voluntary surrender of physical custody of a newborn infant by a mother to authorized Safe Haven personnel pursuant to the provisions of the Newborn Infant Safe Haven Act, 19 GCA, Chapter 13, Article 5, is an absolute defense to prosecution for child abuse as a result of deserting that child with intent to abandon that child under Subsection (a)(2)(A) of this Section. (1) For purposes of this Subsection, "authorized Safe Haven personnel" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(a). (2) For purposes of this Subsection, "mother" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(d). (3) For purposes of this Subsection, "newborn infant" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(e).

(d) Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (1) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (2) failure to do or permit to be done any act necessary for the child's physical or moral well-being.

2/29/2024

SEVENTH PLENARY, C50ES AGAINST PERSONS  
SUBCOMMITTEE

50



## § 19.60 Terrorizing

Upheld and not vague People v. Tjong, 2021 Guam 13. However, poorly worded and confusing.

(a) A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, and the natural and probable consequence of such a threat, is to place the person to whom the threat is communicated or the person threatened in reasonable fear that crime will be committed. (b) Terrorizing is a felony of the third degree.

Recommend amending for plain language:

(a) A person is guilty of terrorizing if he communicates ~~to any person~~ a threat to commit ~~or to cause to be committed~~ a crime of violence dangerous to human life, ~~against the person to whom the communication is made or another~~, to any person and the natural ~~and probable~~ consequence of such a threat, is to place the person to whom the threat is communicated ~~or the person threatened~~ in reasonable fear that crime will be committed.

(b) Terrorizing is a felony of the third degree.

2/29/2024

SEVENTH PLENARY, C51ES AGAINST PERSONS  
SUBCOMMITTEE

51



# Thank you!

2/29/2024

SEVENTH PLENARY, C52ES AGAINST PERSONS  
SUBCOMMITTEE

52



## Notice of Next Meeting Thursday, April 4, 2024, Noon (Tentative)

53



## Agenda

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES October 5, 2023, December 7, 2023
- V. OLD BUSINESS
  - A. Fourth Quarter Report
  - B. Subcommittee on Drugs & Other Criminal Offenses: Continued Discussion of Proposed 9 GCA § 90106 (Correctional Medical Clinics) for Consideration and Approval
  - C. Subcommittee on Crimes Relating to Property: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
- VI. NEW BUSINESS
  - A. Subcommittee on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - B. Notice of next meeting: Thursday, April 4, 2024, Noon (Tentative)
- VII. Communications
- VIII. Public Comment
- IX. Adjournment

54



*Thank you!*

55