

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION (CLRC)  
PLENARY MEETING | THURSDAY, APRIL 4, 2024  
MINUTES**

**I. CALL TO ORDER**

The meeting was called to order by Chairman Jonathan Quan at 12:00 PM.

**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**

CLRC Research Assistant Rennae Meno called the roll.

CLRC Members:

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

Hon. Maria T. Cenzone, (No response during roll call)

Hon. Anita A. Sukola, Present on Zoom, Tumon

Atty. William Bucky Brennan, (No response during roll call)

DOC Director Fred Bordallo, Present, Judiciary of Guam

Chief of Police Stephen Ignacio or Designee Lt Ron Taitano, (No response during roll call)

Atty Joseph B McDonald, Present on Zoom, Agana

Atty. F. Randall Cunliffe, Present on Zoom, Agana

Mr. Monty McDowell, Present on Zoom Office, Harmon

Public Defender Stephen Hattori or Designee Dep. Dir. John Morrison (No response during roll call)

Attorney General Douglas Moylan or Designee AAG Steven Coaty, Present on Zoom, Tamuning

Atty. Mike Phillips, (No response during roll call)

Ms. Valerie Reyes, (No response during roll call)

Atty. Christine Tenorio, Present on Zoom, Tamuning

Atty. Phillip Tydingco, Present, Judiciary of Guam

Ex-Officio, (Non-Voting Members)

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

Compiler of Laws Geraldine Cepeda, Present, Judiciary of Guam

Chairman Quan acknowledged a quorum present.

**IV. DISPOSAL OF MINUTES: February 29, 2024**

The minutes from the previous Plenary Meeting, February 29, 2024, was approved without objection.

**V. OLD BUSINESS**

**A. 2024 First Quarter Report Reminder and Subcommission Status Update.**

Director Quenga reminded members that the First Quarter Report is due and asked for progress reports from Subcommissions. He informed members that the Criminal Procedure subcommission is reviewing chapters 1, 4, and 7 of Title 9. Additionally, he sent a request to review criminal statutes affecting various agencies to ensure their accuracy and up-to-date status. The Commission will provide an update when the review process is complete.

## **VI. NEW BUSINESS**

### **A. Subcommission on Drugs & Other Criminal Offenses: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval**

Presentation for DOCO was tabled until next plenary meeting to allow more time for DOCO to review their chapters

### **B. Subcommission on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval**

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

Director Quenga presented proposed revisions and recommendations for 9 GCA Chapters 1 and 4 in a PowerPoint presentation (Attachment 1).

- 9 GCA Chapter 1. Preliminary Provisions: Definitions.
  - § 1.10. Short Title. Amend to clarify Code is Title 9 GCA known as the Guam Criminal Code as shown in Attachment 1, p. 3.
    - Discussion: Amendments intended for consistency with similar section 8 GCA § 1.01 (from the Criminal Procedure Code) and to provide clarification. The proposed new second sentence was withdrawn after discussion that it is unnecessary. Section to read “This Title 9 of the Guam Code Annotated shall be known as the Guam Criminal Code.”
  - § 1.12. Severability. Repeal and reenact as a revised § 1.12 entitled “Rules of Construction” as shown in Attachment 1, pp. 3-4.
    - Discussion: Severability to be consolidated into a revised § 1.12 along with other construction sections of this Chapter 1.
  - Revised § 1.12. Rules of Construction. Reenacted as a revised § 1.12 as shown in Attachment 1, p. 4.
    - Discussion: Revised § 1.12 intended to consolidate the other rules of construction sections of this chapter: §§ 1.12 (Severability), 1.34 (Rules of Construction), 1.36 (Headings), 1.38 (Amendments Included), 1.42 (Tenses), 1.44 (Gender), 1.46 (Number), and 1.48 (Shall and May).
  - § 1.14. Purpose for Defining Offenses. Amend title of section and add new subsections (b)(8), (9) and (10) as shown in Attachment 1, p. 5).

- Discussion: Amend title to “Purposes, Principles of Construction” as used by the source MPC § 1.02 for a better description of this section. Added subsection (b)(8) taken from New Jersey to promote restitution to victims. Added subsection (b)(9) taken from the United States Code to promote educational, vocational and medical care of inmates. Added subsection (b)(10) taken from ABA Criminal Justice Sentencing Standards to safeguard against disproportionate punishment.
- § 1.16. Territorial Applicability. Amend to remove the word “territory” and clarification of citations as shown in Attachment 1, p. 6-7.
  - Discussion. Amendments are for consistency with 1 GCA § 420 which prohibits the use of “territory” in direct titular association with the island, people or government of Guam. Other amendments are for clarification of citations.
- § 1.18. Classes of Crimes. Amend to remove the word “territory” as shown in Attachment 1, p. 8.
  - Discussion: Amendments for consistency with 1 GCA § 420.
- § 1.19. Felonies Defined and Classified. Amend to remove the word “territory” as shown in Attachment 1, p. 9.
  - Discussion: Amendment for consistency with 1 GCA § 420.
- § 1.20. Relationship of Code to Other Laws; Contempts, Penalties and Remedies. Amend to remove the word “territory” as shown in Attachment 1, p. 9.
  - Discussion: Amendment for consistency with 1 GCA § 420.
- § 1.22. Prosecution for Conduct Which Constitutes More Than One Offense. Citation clarification as shown in Attachment 1, p. 10.
- § 1.24. Double Jeopardy. Same Offense. Typographical correction as shown in Attachment 1, p. 10.
- § 1.26. Double Jeopardy. Different Offense. Citation clarification as shown in Attachment 1, p. 10.
- § 1.28. Concurrent Jurisdiction. When a Bar to Prosecution. Amend to remove “territory” and reformat (a) as shown in Attachment 1, p. 11.
  - Discussion: Amendments for consistency with 1 GCA § 420 which prohibits the use of “territory” in direct titular association with the island, people or government of Guam. Amendment to subsection (a) to return the format of the paragraph to the format provided in the source MPC and NJ statutes. No substantive changes were suggested.
- § 1.30. Former Prosecution. When Not a Bar to Present Prosecution. Grammatical and citation clarification as shown in Attachment 1, p. 12.
- § 1.34. Rules of Construction. Repeal and reenact into consolidated revised § 1.12 as shown in Attachment 1, p. 13.
  - Discussion: Consolidated into a single rules of construction section.
- § 1.36. Headings. Repeal and reenact into consolidated revised § 1.12 as shown in Attachment 1, p. 13.
  - Discussion: Consolidated into a single rules of construction section.
- § 1.38. Amendments Included. Repeal and reenact into consolidated revised § 1.12 as shown in Attachment 1, p. 13.

- Discussion: Consolidated into a single rules of construction section.
- § 1.42. Tenses. Repeal and reenact into consolidated revised § 1.12 as shown in Attachment 1, p. 13.
  - Discussion: Consolidated into a single rules of construction section.
- § 1.44. Gender. Repeal and reenact into consolidated revised § 1.12 as shown in Attachment 1, p. 13.
  - Discussion: Consolidated into a single rules of construction section.
- § 1.46. Number. Repeal and reenact into consolidated revised § 1.12 as shown in Attachment 1, p. 13.
  - Discussion: Consolidated into a single rules of construction section.
- § 1.48. Shall and May. Repeal and reenact into consolidated revised § 1.12 as shown in Attachment 1, p. 13.
  - Discussion: Consolidated into a single rules of construction section.
- § 1.50. Military Authority. No change as shown in Attachment 1, p. 14.
  - Discussion: This law is not unique to Guam. It exists in other states such as Arizona, Nevada, Utah and California. It is necessary to avoid interference with concurrent jurisdiction of military branches.
- § 1.60. General Definitions. Repeal definitions as shown in Attachment 1, p. 14, except (f) as noted below.
  - Discussion: Definitions of chapter, article, section, subsection and paragraph deleted as unnecessary. Definition of person in (f) shall be kept.
- § 1.70. Peace Officer. No change as shown in Attachment 1, p. 15.
  - Discussion: This section references the definition of peace officer in 8 GCA § 5.55 (in the Criminal Procedure Code). No conflicts were noted with the definition of peace officer in 19 GCA § 51101 (in the P.O.S.T. chapter). Question raised on Port and Airport police officers and their designation as peace officers limited by enabling legislation. Possible conflicts will be determined when 8 GCA § 5.55 is reviewed by the Subcommittee on Criminal Procedure.
- § 1.80. Territory. Repeal entire section as shown in Attachment 1, p. 15.
  - Discussion: This section is unnecessary under 1 GCA § 420 which prohibits the use of “territory” in direct titular association with the island, people or government of Guam.

Chairman Quan called for a motion to accept the recommended changes except as noted after discussions. A motion was made and seconded. Without objection, the motion carried and recommendations moved to the final reading file.

- 9 GCA Chapter 4 (General Principles of Liability)
  - § 4.10. Conduct to Include Voluntary Act or Omission. No change as shown in Attachment 1, p. 17.
  - § 4.15. Voluntary Act Defined. No change as shown in Attachment 1, p. 17.
  - § 4.20. Liability for Omission Limited. No change as shown in Attachment 1, p. 17.
  - § 4.25. Culpability. No change as shown in Attachment 1, p. 17.
  - § 4.30. Culpability Defined. No change as shown in Attachment 1, p. 18.

- § 4.35. Culpability Applied to Elements of Offense. No change.
  - Discussion: As shown in Attachment 1, p. 19, the subcommission initially recommended striking the language in (a) “but does not specify the conduct, attendant circumstances or result to which it applies” and replacing it with “without distinguishing among the material elements thereof.” The added language was taken from the source MPC and NJ statutes. Members disagreed with the proposed amendment and it was withdrawn.
- § 4.40. Culpable Mental State Generally Required. No change as shown in Attachment 1, p. 20.
- § 4.45. Same Culpable Mental State: When Inapplicable. Non-substantive amendment to title as shown in Attachment 1, p. 21.
  - Discussion: The subcommission initially recommended adding “legislative intent to imposed strict liability” and striking “purpose to dispense with any culpable mental state requirements.” The added language was taken from the source MPC and NJ statutes. Members disagreed with the proposed “legislative intent” language and it was withdrawn.
- § 4.50. Causation Established and Defined. Correction of typographical error as shown in Attachment 1, p. 22.
- § 4.55. Guilt Established by Causing or Aiding Innocent Party in Commission of Crime. No change as shown in Attachment 1, p. 23.
- § 4.60. Guilt Established by Complicity. No change as shown in Attachment 1, p. 23.
- § 4.65. Criminal Facilitation Established and Punished. No change as shown in Attachment 1, p. 23.
- § 4.70. Criminal Liability for Acts of Another: Non-Availability of Certain Defenses Not Available. Non substantive amendment to title as shown in Attachment 1, p. 24.
- § 4.75. Same Criminal Liability for Acts of Another: Defenses Available. Non substantive amendment to title as shown in Attachment 1, p. 24.
- § 4.80. Criminal Liability of Corporations. No change as shown in Attachment 1, p. 25.

Chairman Quan called for a motion to accept the recommended changes. Without objection the motion carried and recommendations were moved to the final reading file.

**C. Notice of next meeting: Thursday, June 6, 2024, Noon (Tentative)**

Chairman Quan informed Members that the next Plenary meeting is tentatively scheduled Thursday, June 6, 2024, at 12:00.

**VII. Communications**

None.

**VIII. Public Comment**

None.

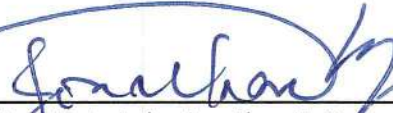
**IX. Adjournment**

Chairman Quan adjourned the meeting without objection.


Respectfully submitted this 13<sup>th</sup> day of June, 2024.

  
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Andrew S. Queega, Executive Director

As set out above, the minutes of the April 4, 2024 meeting were approved by the CLRC at the June 13, 2024 meeting.

  
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Magistrate Judge Jonathan R. Quan, Chairman  
Date: ~~May 29, 2024~~ (18)  
June 13, 2024

# ATTACHMENT 1 - SUBCOMMISSION ON CRIMINAL PROCEDURE PRESENTATION




**Report of the Subcommittee on Criminal Procedure**

April 4, 2024

Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval


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

1



**Review of 9 GCA Chapters 1 and 4**

2



**Chapter 1 – Preliminary Provision: Definitions**


**§ 1.10. Short Title.**  
This Code—~~Title 9 of the Guam Code Annotated~~ shall be known as the Guam Criminal and Correctional Code. ~~“Code” as used in this Chapter 1 refers to the Guam Criminal Code.~~

[Comment: For consistency with 8 GCA § 1.01 (Short Title), to shorten title of the criminal code, and to provide a definition of “Code” for clarity in this Chapter 1.]

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

[Comment: Moved to revised § 1.12 (Rules of Construction) for consolidation with other construction provisions.]

3



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

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

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

(c) ~~The present tense includes the past and future tenses, and the present.~~ (d) ~~The masculine gender includes the feminine and neuter.~~

(e) ~~The singular number includes the plural, and the plural, the singular.~~ (f) ~~Shall is mandatory and may is permissive.~~

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

[Comment: This revised section incorporates §§ 1.12 (Severability), 1.34 (Rules of Construction), 1.36 (Headings), 1.38 (Amendments included), 1.42 (Tenses), 1.44 (Gender), 1.46 (Number), 1.48 (Shall and May).]

4



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

- (a) The general purposes of the provisions governing the definition of offense are:
- (1) to forbid, prevent, and condemn conduct that unjustifiably and unreasonably infringes or threatens substantial harm to individual or public interests;
  - (2) to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentence authorized, the rehabilitation of those convicted, and their confinement when required in the interest of public protection;
  - (3) to subject to public control persons whose conduct indicates that they are disposed to commit offenses;
  - (4) to give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
  - (5) to differentiate on reasonable grounds between serious and minor offenses; and
  - (6) to define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault.
- (b) The general purposes of the provisions governing the sentencing of offenders are:
- (1) to prevent and condemn the commission of offenses;
  - (2) to promote the correction and rehabilitation of offenders;
  - (3) to assure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protection;
  - (4) to safeguard offenders against excessive, disproportionate, or arbitrary punishment;
  - (5) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;
  - (6) to differentiate among offenders with a view to a just individualization in their treatment; and
  - (7) to advance the use of generally accepted scientific methods and knowledge in sentencing offenders.
- (8) to promote restitution to victims. [NU]
- (9) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. [USC]
- (10) to impose sentences no more severe than necessary to achieve the societal purposes for which they are authorized. [ABA]
- (c) The provisions of this Code shall be construed according to the fair import of their terms, but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by this Code shall be exercised in accordance with the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.
- [COMMENT: Title from MPC for better description. Subsection (b)(8) from NI. Subsection (b)(9) from USCA. Subsection (b)(10) from ABA Criminal Justice Sentencing Standards.]



**§ 1.16. Territorial Applicability.**

- (a) Except as otherwise provided in this Section, a person may be convicted under the law of ~~this Territory~~ Guam of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:
- (1) the conduct which is an element of the offense or the result which is such an element occurs within ~~this Territory~~ Guam;
  - (2) conduct occurring outside ~~this Territory~~ Guam is sufficient under the law of ~~this Territory~~ Guam to constitute an attempt to commit an offense within ~~this Territory~~ Guam;
  - (3) conduct occurring outside ~~this Territory~~ Guam is sufficient under the law of ~~this Territory~~ Guam to constitute a conspiracy to commit or offense within ~~this Territory~~ Guam and an overt act in furtherance of such conspiracy occurs within ~~this Territory~~ Guam;
  - (4) conduct occurring within ~~this Territory~~ Guam establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which is also an offense under the law of ~~this Territory~~ Guam;
  - (5) the offense consists of the omission to perform a legal duty imposed by the law of ~~this Territory~~ Guam with respect to domicile, residence, or a relationship to a person, thing, or transaction in ~~this Territory~~ Guam; or
  - (6) the offense is based on a statute of ~~this Territory~~ Guam which expressly prohibits conduct outside ~~this Territory~~ Guam, when the conduct bears a reasonable relation to a legitimate interest of ~~this Territory~~ Guam and the person knows or should know that his conduct is likely to affect that interest.

[Comment. "Territory" changed to Guam per 1 GCA § 420. Citation clarifications.]



**§ 1.16. Territorial Applicability. (CONTINUED)**

- (b) ~~Paragraph (b) of Subsection (a)(1) does not apply when either causing a specified result or an intent to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.~~
- (c) ~~Paragraph (c) of Subsection (a)(1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside this Territory, Guam, which would not constitute an offense if the result had occurred there, unless the person intentionally or knowingly caused the result within this Territory, Guam.~~
- (d) When the offense is homicide, either death of the victim or the bodily impact causing death constitutes a "result," within the meaning of ~~Paragraph (c) of Subsection (a)(1)~~, and if the body of a homicide victim is found within ~~this Territory~~ Guam, it is presumed that such result occurred within ~~this Territory~~ Guam.
- (e) ~~this Territory~~ Guam includes the land and water and the air space above such land and water with respect to which ~~this Territory~~ Guam has legislative jurisdiction.
- (f) Notwithstanding that territorial jurisdiction may be found under this Section, the court may dismiss, hold in abeyance for up to six months, or with the permission of the defendant, place on an inactive list a criminal prosecution under the law of ~~this Territory~~ Guam where it appears that such action is in the interests of justice because the defendant is being or is likely to be prosecuted for an offense based on the same conduct in another jurisdiction and ~~this Territory~~ Guam's interest will be adequately served by a prosecution in the other jurisdiction.

[Comment. "Territory" changed to Guam per 1 GCA § 420. Citation clarifications.]



**§ 1.18. Classes of Crimes.**

- (a) An offense defined by this Code or by any other statute of ~~this Territory~~ Guam, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors or petty misdemeanors.
- (b) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which, apart from an extended term, is in excess of one year.
- (c) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto.
- (d) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.
- (e) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto or if it is defined by a statute other than this Code which now provides that person convicted thereof may be sentenced to imprisonment for a maximum term of less than one year.
- (f) An offense defined by this Code or by any other statute of ~~this Territory~~ Guam, constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.
- (g) An offense defined by any statute of ~~this Territory~~ Guam, other than this Code shall be classified as provided in this Section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

[Comment. "Territory" changed to Guam per 1 GCA § 420.]



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

- (a) Felonies defined by this Code are classified, for the purpose of sentence, into three degrees, as follows:
  - (1) felonies of the first degree;
  - (2) felonies of the second degree;
  - (3) felonies of the third degree.

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

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

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

- (a) No conduct constitutes an offense unless it is a crime or violation under this Code or other statute of ~~this Territory~~ Guam.
- (b) The provisions of this Code shall apply to offenses defined by other statutes, unless otherwise expressly provided or unless the context otherwise requires.
- (c) Nothing in this Code shall affect the power of a court to punish contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.
- (d) Nothing in this Code shall bar or suspend any liability for damages, penalty, forfeiture, or other remedy otherwise authorized by law to be recovered or enforced in any civil action or proceeding, for any conduct punishable by this Code.

[Comment: "Territory" changed to Guam per 1 GCA § 420.]



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

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

- (a) one offense is included in the other as defined in § GCA 6 105.58 of the Criminal Procedure Code;

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

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

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

- (a) The former prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is for:
  - (1) any offense of which the defendant could have been convicted on the first prosecution;
  - (2) any offense of which the defendant should have been tried on the first prosecution under Subsection (b) of § 65-20 of the Criminal Procedure Code or GCA 6 65.300 unless the court ordered a separate trial of the charge of such offense; or

[Comment: Citation clarifications. Typo correction.]



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

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

- (a) the first prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is based on the same conduct, unless:
  - (1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or
  - (2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted; or
  - (3) the second offense was not consummated when the former trial began; or
  - (4) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or
  - (5) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted; or
  - (6) the second offense was not consummated when the former trial began; or
- (b) the former prosecution was terminated after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

[Comment: "Territory" changed to Guam per 1 GCA § 420. Citation clarifications. Language in (a) returned to the format provided in the MPC and NJ statute with no changes.]




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

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

- (a) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense tried in that court;
- (b) The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a petition for post-conviction relief or similar process, except that any bar as to re-prosecution for a greater inclusive offense created by Subsection (a) of § 1.24(a) shall apply;
- (c) The former prosecution resulted in a plea of guilty or nolo contendere which was held invalid in an appeal under 8 GCA § 130.15(e) and the defendant may be retried as if the former plea had not been entered.

[Comment: Grammar correction and citation clarification.]



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

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

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


**§ 1.27. Tenses.**  
 The present tense includes the past and future tenses, and the future, the present.

**§ 1.28. Gender.**  
 The masculine gender includes the feminine and neuter.

**§ 1.29. Number.**  
 The singular number includes the plural, and the plural, the singular.

**§ 1.30. Shall and May.**  
 Shall is mandatory and may is permissive.

[Comment. Consolidated in revised § 1.12 (Rules of Construction)].




**§ 1.50. Military Authority.**  
 This Code does not affect any authority otherwise conferred by law upon any court-martial or other military authority or officer to prosecute and punish persons violating such codes or laws.

[Comment. No change. This provision exists in the criminal codes of many states (e.g. AZ, NV, UT, CA).]

**§ 1.60. General Definitions Applicable to Entire Title.**  
 Unless otherwise expressly stated:

- (b) Chapter means a chapter of this Title;
- (c) Article means an article of the chapter in which that term occurs;
- (d) Section means a section of this Code;
- (e) Subsection means a subsection of the section in which that term occurs;
- (f) Paragraph means a paragraph of the subsection in which that term occurs;
- (g) Person means any natural person, partnership, firm, association, corporation or other legal entity.

[Comment. For discussion. Question the need for this section. Is the definition of Person necessary?]



**§ 1.70. Peace Officer.**  
 As used in this Code, peace officer has the meaning provided by 8 GCA § 5.55 of the Criminal Procedure Code.


[Comment. GCA contains two main definitions for Peace Officer: 8 GCA § 5.55 (in the Criminal Procedure Code) and 17 GCA § 51101 (POST chapter). Section 5.55 contains more Peace Officer designated positions than Section 51101 likely due to POST requirements not being applicable to certain Peace Officer designated positions (e.g. mayors and vice mayors, Rev Tax compliance officers and investigators, U.S. Government agents and investigators, etc.). No statutory conflicts were found. No change is recommended for this section 1.70.]

**§ 1.80. Territory.**  
 As used in this Code, Territory means the territory of Guam.

[COMMENT. Unnecessary per 1 GCA § 420:

**§ 420. Affirmation of Self-Respect and Prohibition of Use of the Term "Territory" in All Official Uses.** Within the Government of Guam.

In the interests of promoting self-respect and in recognition of the necessarily pejorative, diminishing and colonial aspects of the term territory within the context of American law, the term territory of Guam or its derivatives, such as territorial, shall not be used in direct titular association with the island, people, or government of Guam or for the purposes of direct self-description, in any government document or otherwise as part of any government title. ...]



Subcommittee on Criminal Procedure - April 6, 2018

Chapter Number/Section	Section	No Change	Amend	Repeal	REPEAL & RE-ENACT
1.00	Amend				
1.01	Amend				Repeal & Re-enact
1.02	Amend				
1.03	Amend				
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## Chapter 4 – General Principles of Liability

### § 4.10. Conduct to Include Voluntary Act or Omission.

A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

### § 4.15. Voluntary Act Defined.

- (a) A voluntary act is one performed consciously as a result of effort or determination.
- (b) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control of it for sufficient time to have been able to terminate his control.

### § 4.20. Liability for Omission Limited.

A person is not guilty of an offense if his liability is based solely on an omission unless the law defining the offense expressly so provides, or a duty to perform the act is otherwise imposed by law.

### § 4.25. Culpability.

Except as provided in § 4.45, a person is not guilty of a crime unless he acts intentionally, knowingly, recklessly or with criminal negligence, as the law may require, with respect to the conduct, the result thereof or the attendant circumstances which constitute the material elements of the crime.

[Comment. No change.]

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### § 4.30. Culpability Defined.

- (a) A person acts intentionally, or with intent, with respect to his conduct or to a result thereof when it is his conscious purpose to engage in the conduct or cause the result.
- (b) A person acts knowingly, or with knowledge, with respect to his conduct or to attendant circumstances when he is aware of the nature of his conduct or that those circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is practically certain to cause the result.
- (c) A person acts recklessly, or is reckless, with respect to attendant circumstances or the result of his conduct when he acts in awareness of a substantial risk that the circumstances exist or that his conduct will cause the result and his disregard is unjustifiable and constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.
- (d) A person acts with criminal negligence, or is criminally negligent, with respect to attendant circumstances or the result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or that his conduct will cause the result and his failure to be aware of the risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

[Comment. No change.]

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### § 4.35. Culpability Applied to Elements of Offense.

- (a) If the definition of an offense prescribes a culpable mental state without distinguishing among the material elements thereof, but does not specify the conduct, attendant circumstances or results to which it applies, the prescribed culpable mental state shall apply to each such material element.
- (b) If the definition of a crime prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.
- (c) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of an offense unless the statute clearly so provides.

[Comment. Clarification. Added language is from the MPC and NJ statute. Compare:

**"If the definition of an offense prescribes a culpable mental state without distinguishing the material elements thereof ..."**

vs.

**"If the definition of an offense prescribes a culpable mental state but does not specify the conduct, attendant circumstances or result to which it applies ..."**

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### § 4.40. Culpable Mental State Generally Required.

Except as provided in § 4.45, if the definition of a crime does not expressly prescribe a culpable mental state, a culpable mental state is nonetheless required and is established only if a person acts intentionally, knowingly or recklessly.

[Comment. No change.]

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**§ 4.45. ~~Culpable Mental State.~~ When Inapplicable.**

The culpable mental state requirements of § 4.25 and § 4.40 do not apply if the offense is a violation or if the law defining the offense clearly indicates a ~~legislative intent to impose strict liability, purpose to dispense with any culpable mental state requirements.~~

[Comment. Clarification. Added language is from the MPC and NJ statute. Compare:

"... if the law defining the offense clearly indicates a *legislative intent to impose strict liability,*

vs.

"... if the law defining the offense clearly indicates a *purpose to dispense with any culpable mental state requirement.*"

Also, see 4.50(a)(2)(B) referencing "strict liability."]



**§ 4.50. Causation Established and Defined.**

(a) An element of an offense which requires that the defendant have caused a particular result is established when his conduct is an antecedent but for which the result would not have occurred, and,

(1) If the offense requires that the defendant intentionally or knowingly caused the result, that the actual result, as it occurred,

(A) is within the purpose or contemplation of the defendant, whether the purpose or contemplation extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that designed or contemplated and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(2) If the offense requires that the defendant recklessly or negligently cause the result, that the actual result, as it occurred,

(A) is within the risk of which the defendant was or should have been aware, whether that risk extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that recklessly or negligently risked and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;(3) If the offense imposes *strict liability*, that the actual result, as it occurred, is a *probably-probable* consequence of the defendant's conduct.

(a) A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed, contemplated or risked is that a different person or property was injured or affected or that a less serious or less extensive injury or harm occurred.

[Comment. No change.]



**§ 4.55. Guilt Established by Causing or Aiding Innocent Party in Commission of Crime.**

A person is guilty of an offense if, acting with the culpability required for the offense, he causes or aids an innocent or non-responsible person to engage in conduct prohibited by the definition of the offense.

**§ 4.60. Guilt Established by Complicity.**

A person is guilty of an offense if, with the intention of promoting or assisting in the commission of the offense, he induces or aids another person to commit the offense. If the definition of the offense includes lesser offenses, the offense of which each person shall be guilty shall be determined according to his own culpable mental state and to those aggravating or mitigating factors which apply to him.

**§ 4.65. Criminal Facilitation Established and Punished.**

A person is guilty of criminal facilitation when, knowing that another person intends to engage in conduct which in fact constitutes a crime, he knowingly furnishes substantial assistance to him.

Criminal facilitation of a felony of the first degree is a felony of the third degree. Criminal facilitation of a felony of the second or of the third degree is a misdemeanor. Criminal facilitation of a misdemeanor or petty misdemeanor is a petty misdemeanor.

[Comment. No change.]



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

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

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

(b) the other person has legal immunity from prosecution, or has not been prosecuted for or convicted of an offense based upon the conduct in question, or has previously been acquitted. SOURCE: M.P.C. § 2.06(6); \*Cal. § 454 (T.D.L., 1967); Mass. ch. 263, § 21(b); N.J. § 2C-2.6(e).

[Comment. Non-substantive amendment to title.]

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

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

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

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

[Comment. Non-substantive amendment to title.]

