



HON. ROBERT J. TORRES
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA, III
PRESIDING JUDGE

Judiciary of Guam

Guam Criminal Law and Procedure Review Commission
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HON. JONATHAN R. QUAN
CHAIRMAN

ANDREW SERGE QUENGA
EXECUTIVE DIRECTOR

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION (CLRC) PLENARY MEETING | THURSDAY, SEPTEMBER 12, 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 Administrative Support Rennae Meno called the roll.

CLRC Members:

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

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

Hon. Anita A. Sukola, (No response during roll call)

Atty. William Bucky Brennan, Present on Zoom, Hågatna

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, Sinajana

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

Mr. Monty McDowell, Present on Zoom, Harmon

Public Defender Designee Dep. Dir. John Morrison. Present, Judiciary of Guam

Attorney General Designee DAG Nathan Tennyson Present on Zoom, Tamuning

Atty. Mike 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 on Zoom, Hågatna

Ex-Officio, (Non-Voting Members)

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

Compiler of Laws Geraldine Cepeda, Present, Judiciary of Guam

Attorney Christine Borja, Present on Zoom

Chairman Quan acknowledged a quorum present.

IV. DISPOSAL OF MINUTES: June 13, 2024

The minutes from the previous Plenary Meeting, June 13, 2024, was approved without objection.

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

V. OLD BUSINESS

A. Subcommittee Status Update and Report of the Executive Director.

Director Quenga reported on informational items:

- On July 17th, a status presentation on the progress of the Commission was delivered to the Guam Legislature in the Guam Supreme Court courtroom. This presentation is posted on the Commission's webpage.
- The Governor approved the FY 2025 budget bill. The Commission's appropriation for the fiscal year and an additional two years to complete its work were approved.
- The Commission's 2nd Quarter Report covering April to June was submitted on August 13 and posted on our webpage.

VI. NEW BUSINESS

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

Compiler of Laws Geraldine Cepeda reported on behalf of Subcommittee Chair Judge Cenon.

- Attorneys Brian Eggleston and Kristine Borja have been appointed as ex officio members to the Subcommittee.
- Chapter 67, the Guam Uniform Controlled Substances Act, will be reviewed next. The Subcommittee will also review Chapter 7, Exemptions and Defenses, specifically Article 2, Mental Responsibility, and not guilty by reason of insanity issues.
- The Judiciary's Mental Health Court team will assist.

The presentation was tabled until the next plenary meeting.

B. Subcommittee on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval

Subcommittee Chair Attorney McDonald presented proposed revisions and recommendations for 9 GCA Chapters 17, 19 22, 25, 25A 26 31 40 89 93 in a PowerPoint presentation (Attachment 1).

- 9 GCA Chapter 17. Unborn Victims of Violence Act. No change recommended as shown in Attachment 1, Slide 9.
- 9 GCA Chapter 19. Assault, Reckless Endangering, Terrorizing.
 - § 19.50. Terroristic Conduct; Defined and Punished. Amend as shown in Attachment 1, Slide 18.
 - Discussion: Remove the semicolon after "assembly" and replace with a comma. Compiler stated this should be a formal amendment to avoid interpretation issues.
 - § 19.70. Stalking. Tabled for further discussion.
 - § 19.81. Interfering with the Reporting of Family Violence; Defined & Punished. Amend subsection (c) as shown in Attachment 1, Slide 21.

- Discussion: Reduce offense level from felony to misdemeanor. Chairman Quan noted that 9 GCA § 30.300(c) (Interfering with the Reporting of Family Violence) has the same provision “interference with the report of family violence is a felony of the third degree”. Needs to be consistent.
- 9 GCA Chapter 22. Kidnapping and Related Offenses.
 - § 22.20. Kidnapping; Defined & Punished. Amend as shown in Attachment 1, Slide 19.
 - Discussion: Replace “felony” with “crime.” Tabled for further discussion.
- 9 GCA Chapter 25. Sexual Offenses.
 - § 25.10. Definitions. Amend as shown in Attachment 1, Slide 16.
 - Discussion: Add new definitions of affinity and consanguinity as those terms are used in § 25.15(a)(2). Consider adding a table of consanguinity (Attachment 1, Slide 17).
- 9 GCA Chapter 25A. Solicitation of Children and Child Pornography.
 - § 25A102. Indecent Electronic Display to a Child. Amend as shown in Attachment 1, Slide 14.
 - Discussion: Delete (c) and add back as a new § 25A106. Tabled for further discussion.
 - § 25A103. Electronic Enticement of a Child as a Third Degree Felony. Amend as shown in Attachment 1, Slides 14 and 15.
 - Discussion: Delete (a)(1)(B). “Reckless disregard” adds vagaries to the statute and is sufficiently covered in (a)(1)(A) “known.” Delete (d) and add back as a new section 25A106. Tabled for further discussion.
 - § 25A104. Electronic Enticement of a Child as a Second Degree Felony. Amend as shown in Attachment 1, Slide 15.
 - Discussion: Delete (a)(1)(B). Same as above for § 25A103(a)(1)(B). Tabled for further discussion.
 - § 25A105. Electronic Enticement of a Child as a First Degree Felony. Amend as shown in Attachment 1, Slide 15.
 - Discussion: Delete (a)(1)(B). Same as above for § 25A103(a)(1)(B). Tabled for further discussion.
 - § 25A106. Add as a new section as shown in Attachment 1, Slide 14.
 - Discussion: Same language as § 25A102(c) and § 25A103(d). Compiler suggested adding a section title. Tabled for further discussion.
 - §§ 25A202(Possession of Child Pornography), 25A203 (Dissemination of Child Pornography), and 25A204 (Production of Child Pornography). Tabled for further discussion.
- 9 GCA Chapter 26. Human Trafficking and Criminal Exploitation Act of 2009.
 - Chapter 26, Article 2 Prevention of Trafficking. Repeal as shown in Attachment 1, Slides 22-24.
 - Discussion: Repeal Article 2 in its entirety. While intent is good, the task force has never been attended too. Law enforcement members of the subcommission think this is an unfunded mandate with many requirements. Task force created in 2009 but never launched by the local AG. It was implemented by federal entities. Tabled for further discussion.

- § 26.41. Protection of Trafficking and Domestic Violence Shelters. Amend as shown in Attachment 1, Slide 13.
 - Discussion: Delete “maliciously” and replace with “knowingly.” No definition of maliciously in Model Penal Code. Interpretation is difficult. Attorney Cunliffe raised the possibility that a family member might knowingly disclose the location of the victim but without malice or criminal negligence making them a criminal. Tabled for further discussion.
- 9 GCA Chapter 31. Offenses Against the Family.
 - § 31.30. Child Abuse; Defined & Punished. Amend as shown in Attachment 1, Slide 12.
 - Discussion: New subsections (a)(2) and (3) clarify and define child abuse and are consistent with 9 GCA § 7.94 on corporal punishment. Deletion of subsection (a)(2)(B) on cruel mistreatment removes redundancy as it is already covered in subsection (a)(1). Definition of neglect added for clarity and to correct charging and proof problems.
 - § 31.65. Curfew Hours for Minors. Tabled for further discussion.
 - § 31.70. Leaving Children Unattended or Unsupervised in Motor Vehicles; Penalty; Authority of Law Enforcement Officer. Tabled for further discussion.

No action was taken on the recommendations. Chairman Quan requested the Subcommittee to work with the Executive Director to prepare clean redlines of recommendations for voting at the next plenary meeting.

C. Subcommittee on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval

Executive Director Quenga presented on behalf of Subcommittee Chair Judge Sukola. Director Quenga covered items previously discussed at the last plenary meeting and further discussed in a Crim Pro Subcommittee working session attended by other members (Joe McDonald, Monty McDowell and Valerie Reyes). He presented proposed recommendations for 9 GCA Chapter 7 and recent amendments to Article 5 by P.L. 37-122 enacted in July as shown in a PowerPoint presentation (Attachment 2). Director Quenga reported that these recommendations would be referred to the Subcommittee on Drugs and Other Criminal Offenses after discussion with their Chair Judge Cenzone.

- 9 GCA Chapter 7. Exemptions and Defenses.
 - § 7.25. Psychiatric Examination and Procedure. Amend as shown in Attachment 2, Slides 3-6.
 - Discussion: Licensed psychologist added to subsection (a) at the suggestion of Attorney Tydingco at the last plenary meeting. Court ordered mental examinations are directed to the Judiciary’s Client Services and Family Counseling Division which has one licensed psychologist and no psychiatrists. Present law is broad including qualified psychiatrist or other qualified person. Other amendments are non-substantive clarifications or are intended to make the section gender neutral. Recommendations will be referred to the DOCO Subcommittee. A specific issue regarding § 7.25(i), allowing a psychiatrist to render an opinion on the mental state of the defendant

compared to Guam Rule of Evidence 704(b) was raised by Attorney Egelston at a working session as shown in Attachment 2, Slide 8. Will leave this issue with the members for consideration and further discussion.

- § 7.34. Acquittal: Court Order of Commitment or Release; Petition for Discharge. Tabled for further discussion by DOCO and other subcommissions as shown in Attachment 2, Slide 9.
- Article 5. Castle Doctrine Act. Amendments made by in July by P.L. 37-122 to Article 5 are shown in red and underlined, as shown in Attachment 2, Slides 10-12.
 - Discussion: Amendments regarding curtilage, and the new pretrial immunity hearing procedure were discussed. No recommendations made. Tabled for further discussion.

D. Notice of next meeting: Thursday, November 7, 2024, Noon (Tentative)

Chairman Quan informed Members that the next Plenary meeting is tentatively scheduled for Thursday, November 7, 2024, at 12:00.

VII. Communications

None.

VIII. Public Comment

None.

IX. Adjournment

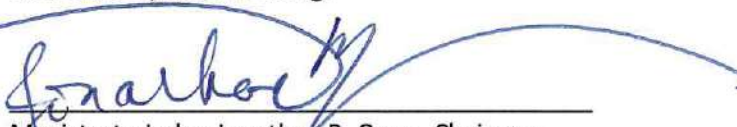
Chairman Quan adjourned the meeting without objection.

Respectfully submitted this 3rd day of December, 2024.



Andrew S. Quenga, Executive Director


As set out above, the minutes of the September 12, 2024, meeting were approved by the CLRC at the December 3, 2024 meeting.



Magistrate Judge Jonathan R. Quan, Chairman

Date: 12/4/24 -

ATTACHMENT 1 - SUBCOMMISSION ON CRIMES AGAINST PERSONS PRESENTATION




REPORT OF THE SUBCOMMISSION ON DRUGS & OTHER CRIMINAL OFFENSES

September 12, 2024

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

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

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Crimes Against Persons Subcommittee
Criminal Law & Procedure Review Commission

Members and ex officio members
GPD Chief Steve Ignacio
GPD Lt. Ron Taitano
Public Defender Steve Hattori
Dep. Public Defender John Morrison
Assistant Attorney General Christine Tenorio
Attorney Sean E. Brown
Attorney Joseph B. McDonald

**REVIEW AND RECOMMENDATIONS FOR
9 GCA CHAPTERS 17, 19, 25, 25A, 26, 31, 40, 89, 93**

PRESENTATION BY J. MCDONALD
PLENARY MEETING
SEP. 12, 2024

Slide 2




Overview

Between Mar. and Aug. 2024, the Crimes Against Persons Subcommittee reviewed Chapters 17, 19, 25, 25A, 26, 31, 40, 89, 93.

This is a report of the Subcommittee's review of those Chapters and its recommendations.

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Overview

Administrative Procedure

The meeting format adaptation (treating WhatsApp as meeting discussion), together with formal reading of the statutes as part of the record, and the continuing focus on local material issues in the substantive criminal statutes afforded the Subcomm'n the opportunity to take a first pass on all the statutes in the assigned portfolio (crimes against persons) and center its efforts on the statutes that are in most need of repair.

Because of the Chair's wisdom in designating trial and appellate lawyers with both prosecutive and defensive interests, "most need of repair" depends largely on whose interest most needs repairing—there has been excellent debate!

From the assigned portfolio we will report on statutes that we believe remain sufficient for those interests.

We will also report on the statutes we have agreed to vote out from the subcomm'n to present to the plenary for referral for the final reading.

For the remaining statutes we will continue to meet to generate a position regarding referral and expect to report on those at our next reporting date.

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ATTACHMENT 1 - SUBCOMMISSION ON CRIMES AGAINST PERSONS PRESENTATION



SUBSTANTIVE CRIMINAL CODE TITLE 9 SNAPSHOT

CHAPTER	TITLE	STATUS OF REVIEW	RECOMMENDATION
93	CRIMINAL SEXUAL CONDUCT ASSESSMENT AND REHABILITATION ACT	Completed first pass. Tabled §§ 93.20, 93.30, 93.35, 93.50.	Pending final, formal subcomm'n action regarding §§ 93.20, 93.30, 93.35, 93.50. All other sections; no changes recommended.
89	CRIMES AGAINST MINORS AND SEX OFFENDER REGISTRY	Completed first pass. Tabled §§ 89.06, 89.08, 89.03.	Pending final, formal subcommission action regarding §§ 89.06, 89.08, 89.03. All other sections; no changes recommended.
40	ROBBERY	Completed.	No changes recommended.


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SUBSTANTIVE CRIMINAL CODE TITLE 9 SNAPSHOT

CHAPTER	TITLE	STATUS OF REVIEW	RECOMMENDATION
31	OFFENSES AGAINST THE FAMILY	Completed first pass. Tabled §§ 31.65 and 31.70.	Amend § 31.30 to clarify elements and remove ambiguous terms. Pending action on §§ 31.65, 31.70. All other sections, no changes recommended
26	HUMAN TRAFFICKING AND CRIMINAL EXPLOITATION	Completed.	Repeal §§ 26.20 – 26.24, 26.41. Because jurisdiction is with federal gov't, no task force is necessary. Amend § 26.41 to read "any person who knowingly publishes..." All other sections; no changes recommended.


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SUBSTANTIVE CRIMINAL CODE TITLE 9 SNAPSHOT

CHAPTER	TITLE	STATUS OF REVIEW	RECOMMENDATION
25A	SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY	Completed first pass. Tabled §§ 25A202, 25A203, 25A204.	Amend § 25A102 (c), 25A103 by deleting the law enforcement exception from each and having a new section that the LE exception applies to all offense conduct in Chapter 25A. Amend § 25A103 by striking (a) 1 (B) because it is redundant and included in (a) 1 (A); same for §§ 25A104, 25A105. Pending action on amendment to statute to include anus as a genital. All other sections; no changes recommended.

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SUBSTANTIVE CRIMINAL CODE TITLE 9 SNAPSHOT

CHAPTER	TITLE	STATUS OF REVIEW	RECOMMENDATION
25	SEXUAL OFFENSES	Completed first pass.	Pending action on proposed amendment to § 25.10 (a) (10) to define "cunnilingus" Amend § 25.10 to include new subsections(a)(12), (13) to define affinity and consanguinity as used in § 25.15 with appended table. Pending action on proposed amendment to § 25.15 to clarify "aided and abetted" is defined by application of Guilt by Complicity, § 4.60. All other sections; no changes recommended.

Slide 8

ATTACHMENT 1 - SUBCOMMISSION ON CRIMES AGAINST PERSONS PRESENTATION



CH. 26 HUMAN TRAFFICKING AND CRIMINAL EXPLOITATION

Amend statute by repealing malicious mental state and replacing with knowing mental state:

§ 26.41 Protection of Trafficking and Domestic Violence Shelters. (a) Any person who ~~maliciously, knowingly~~ or with criminal negligence publishes, disseminates, or otherwise discloses the location of any trafficking victim, any trafficking shelter or domestic violence shelter or any place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking victim, trafficking shelter or domestic violence shelter, is guilty of a misdemeanor.

NO DEFINITION OF MALICE IN GUAM'S VERSION OF MPC

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CH. 25A SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY

Amend statute by deleting exceptions found in §§ 25A102 (c), 25A103 (d) :

~~It shall not constitute a defense against any charge or violation of this Section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this Section.~~

Insert a new section providing the exception applies to all conduct by law enforcement:

§ 25A106 It shall not constitute a defense against any charge or violation of this Section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this Chapter.

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CH. 25A SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY

Amend § 25A103 by striking (a) (1) (B); c.f. (a) (1) (A):

Electronic Enticement of a Child as a Third Degree Felony. (a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission to solicit, lure, or entice, or attempt to solicit, lure, or entice: (1) intentionally or knowingly communicates: (A) with a minor known by the person to be under the age of eighteen (18) years; ~~(B) with another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years;~~ or (C) with another person who represents him or herself to be under the age of eighteen (18) years ...

Amend § 25A104 by striking (a) 1 (B); amend § 25A105 by striking (a) 1 (B).

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CH. 25 SEXUAL OFFENSES (CRIMINAL SEXUAL CONDUCT)

Amend § 25.10 to include new subparagraph (a) (12) and (13) to define affinity and consanguinity as used in § 25.15:

§ 25.15. First Degree Criminal Sexual Conduct. (a) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists: (2) the victim is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim, or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit...

(a) As used in this Chapter:

(12) "Affinity" means family members related by marriage. The method of computing degrees of affinity is the same method as computing degrees of consanguinity.

(13) Consanguinity, or relationship by blood ("related by blood") as used in this Chapter means relationship between persons arising by descent from a common ancestor" or a relationship "by birth rather than by marriage. The degree of consanguinity is determined by counting upward from one of the persons in question to the nearest common ancestor, and then down to the other person, calling it one degree for each generation in the ascending as well as the descending line.

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ATTACHMENT 1 - SUBCOMMISSION ON CRIMES AGAINST PERSONS PRESENTATION

CH. 25 SEXUAL OFFENSES (CRIMINAL SEXUAL CONDUCT)

Table of Consanguinity
Showing degrees of relationship

Slide 17

CH. 19 ROBBERY

Amend § 19.50 to clarify language:

§ 19.50. Terroristic Conduct; Defined & Punished.

(a) A person is guilty of terroristic conduct if he threatens to commit any crime of violence with intent to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such inconvenience.

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CH. 22 KIDNAPPING

Amend § 22.20 (a)(2) to cover taking a kid from a bus stop:

§ 22.20. Kidnapping; Defined & Punished. (a) A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period, with any of the following purposes: (1) to hold for ransom or reward; (2) to facilitate commission of any felony crime or flight thereafter; (3) to inflict bodily injury on or to terrorize the victim or another; or (4) to interfere with the performance of any governmental or political function.

See K.S.A.2015 Supp. 21-5408; *State v. Battles*, 369 P.3d 342 (Kan. Ct. App. 2016).

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CH. 22 KIDNAPPING

Other jurisdictions

COLORADO
Second degree kidnapping occurs when "[a] person ... knowingly seizes and carries a person from one place to another, without [their] consent and without lawful justification."

OREGON
A person commits the crime of kidnapping in the second degree if, with intent to interfere substantially with another's personal liberty, and without consent or legal authority, he:
'(a) Takes the person from one place to another; or
* * * * *


"Without consent" is defined in ORS 163.215(1):
"Without consent" means that the taking or confinement is accomplished by force, threat or deception, or, in the case of a person under 16 years of age or who is otherwise incapable of giving consent, *325 that the taking or confinement is accomplished without the consent of his lawful custodian."

ARKANSAS
A person commits the offense of kidnapping if, without consent, he restrains another person so as to interfere substantially with his liberty with the purpose of:
* * * * *

(4) inflicting physical injury upon him, or of engaging in sexual intercourse, deviate sexual activity, or sexual contact with him.

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ATTACHMENT 1 - SUBCOMMISSION ON CRIMES AGAINST PERSONS PRESENTATION




CH. 19 ROBBERY

Amend § 19.81 to reduce offense level:

Interfering with the Reporting of Family Violence; Defined & Punished. (a) Any person commits the crime of interfering with the reporting of family violence if the person: (1) commits an act of family violence, as defined in § 30.10 of Chapter 30 of this Title; and (2) intentionally, knowingly, or recklessly prevents or attempts to prevent the victim of or a witness to that act of family violence from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official. (b) Commission of a crime of family violence under Subsection (a) of this Section is a necessary element of the crime of interfering with the reporting of family violence. (c) Interference with the reporting of family violence is a felony misdemeanor.


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SUBCOMMISSION RECOMMENDATIONS FOR REPEAL OF SECTIONS TO THE SUBSTANTIVE CRIMINAL CODE

HUMAN TRAFFICKING CH. 26 ART. 2

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Chapter 26 HUMAN TRAFFICKING AND CRIMINAL EXPLOITATION

Repeal Art. 2 since the Feds. have a robust enforcement statute and powers; no need for a task force.

**ARTICLE 2
PREVENTION OF TRAFFICKING**

- § 26.20. Territorial Task Force for Prevention of Trafficking.
- § 26.21. Data Collection and Dissemination.
- § 26.22. Training.
- § 26.23. Public Awareness.
- § 26.24. Role on Non-Governmental Organizations.

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REPEAL CH. 26 HUMAN TRAFFICKING AND CRIMINAL EXPLOITATION


Robust federal mechanism makes this unnecessary.

§ 26.20. Task Force for Prevention of Trafficking. (a) An inter-agency task force to develop and implement a Guam Plan for the Prevention of Trafficking in Persons. Such a task force shall meet at least annually and should include all aspects of trafficking, including sex trafficking and labor trafficking of both U.S. citizens and foreign nationals.

(e) The task force shall carry out the following activities either directly or via one or more of its constituent agencies: (1) Develop the Guam Plan. (2) Coordinate the implementation of the Territorial Plan. (3) Coordinate the collection and sharing of trafficking data among government agencies, which data collection shall respect the privacy of victims of trafficking in persons. (4) Coordinate the sharing of information between agencies for the purposes of detecting criminal groups engaged in trafficking. (5) Explore the establishment of territorial policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in Section 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations. (6) Establish policies to enable the government of Guam to work with non-governmental organizations and other elements of civil society to prevent trafficking and provide assistance to U.S. citizen and foreign national victims. (7) Review the existing services and facilities to meet trafficking victims' needs and recommend a system that would coordinate such services, including but not limited to: health services, including mental health; housing; education and job training; English as a second language classes; interpreting services; legal and immigration services; and victim compensation. (8) Evaluate various approaches used by the government of Guam and state governments to increase public awareness of the trafficking in persons, including U.S. citizen and foreign national victims of trafficking in persons. (9) Submit an annual report of its findings and recommendations to the Governor, the Speaker of the Guam Legislature, the Guam Legislature and the Office of the Attorney General on or before December 31 of each calendar year.

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ATTACHMENT 2 - SUBCOMMISSION ON CRIMINAL PROCEDURE PRESENTATION




Report of the Subcommittee on Criminal Procedure

September 12, 2024

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

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


Slide 1



Overview

- Presented 9 GCA Chapter 7 (Exemptions and Defenses) at the June 13 Plenary Meeting
- Tabled Section 7.25 (Psychiatric Examination and Procedure and Section 7.34 (Acquittal: Court Order of Commitment or Release; Petition for Discharge)
- Tabled Article 4 (Justification) and Article 5 (Castle Doctrine Act)
- Continued discussions and recommendations

Slide 2



Amend § 7.25 to add "licensed psychologist" and make gender neutral

§ 7.25. Psychiatric or Psychological Examination and Procedure.


(a) Whenever a plea of not guilty by reason of mental illness, disease or defect is entered or a notice is given under § 7.22, the court shall appoint at least one qualified psychiatrist, licensed psychologist or other qualified person (hereinafter referred to as psychiatrist) to examine the defendant and to report upon his the mental condition of the defendant.

(b) Whenever, in the opinion of the court, any other expert evidence concerning the defendant's mental condition is, or will be required by the court or either party, the court shall appoint one or more such experts to examine the defendant and to report upon his the mental condition of the defendant as the court may direct.

(c) In addition to the expert witness appointed by the court, either party in a criminal action may retain other qualified psychiatrists, licensed psychologists or other experts to examine the defendant and to report upon his the mental condition of the defendant. Experts retained pursuant to this Section shall be permitted to have reasonable access to the defendant for the purposes of examination and the giving of testimony.

(d) The qualified psychiatrists, licensed psychologists and other experts appointed by the court and those called by the prosecuting attorney shall be allowed, in addition to their actual traveling expenses, such fees as in the discretion of the court seem reasonable.

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§ 7.25 Continued

(e) On recommendation of the qualified psychiatrists, licensed psychologists or other experts appointed by the court, the court may order the defendant committed to the Guam Memorial Hospital or any other suitable facility for observation and examination as it may designate for a period not to exceed thirty days, unless the court, for good cause, orders a longer period of commitment not to exceed sixty days. Any defendant so committed may be given such care and treatment as is determined to be necessary by the psychiatric staff of such institution or facility. A full report of any such care and treatment shall be included in the report required under Subsection (g). The superintendent or other person in charge of such institution or facility shall permit those qualified psychiatrists, licensed psychologists or other experts appointed under this Section to have reasonable access to the defendant.

(f) Copies of any reports, records, documents or information furnished by either party to the qualified psychiatrists, licensed psychologists or other experts appointed pursuant to this Section shall be given to the other party in the action. Any qualified psychiatrist, licensed psychologist or other expert appointed pursuant to this Section, or retained by either party, shall have the right to inspect and make copies of reports and records relating to the defendant in any facility or institution in which they are located. Compliance with this Section may be required by an appropriate order of the court.

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ATTACHMENT 2 - SUBCOMMISSION ON CRIMINAL PROCEDURE PRESENTATION




§ 7.25 Continued

(g) Each qualified psychiatrist, licensed psychologist or other expert appointed by the court who examines the defendant pursuant to this Section shall file a written report with the clerk of the court who shall deliver copies to each party. The report of the examination shall include, but need not be limited to, the following:

- (1) A description of the nature of the examination;
- (2) The number of examinations and duration of each examination;
- (3) The sources of information about the defendant;
- (4) A diagnosis or description of the defendant's mental condition;
- (5) An opinion as to the defendant's competency to be proceeded against, together with the reasons and basis for the opinion;
- (6) If the defendant has been convicted, an opinion as to ~~the~~ the defendant's competency to be sentenced, together with the reasons and basis for the opinion;
- (7) If prior to conviction, an opinion as to whether or not the defendant was suffering from any mental illness, disease or defect at the time of the conduct alleged to have constituted the offense charged against the defendant and whether, as a result thereof, ~~he~~ the defendant lacked substantial capacity to know or understand what ~~he~~ the defendant was doing; or to know or understand that ~~he~~ the defendant's conduct was wrongful or to control ~~his~~ the defendant's actions; or the extent to which, as a consequence of mental illness, disease or defect, the defendant did or did not have a state of mind or the capacity to have a state of mind relevant to any issue in the trial of the action;
- (8) A report of the care and treatment received by defendant prior to the examination.


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§ 7.25 Continued

(h) Upon the trial, the qualified psychiatrists, licensed psychologists or other experts appointed by the court may be called as witnesses by either party to the action or by the court and when so called, shall be subject to all legal objections as to competency and bias and as to qualification as an expert witness. When called by the court or by either party to the action, the court may examine the qualified psychiatrist, licensed psychologist or other expert, but either party shall have the same right to object to questions asked by the court and the evidence adduced as though the qualified psychiatrist, licensed psychologist or other expert were called by an adverse party. When the qualified psychiatrist, licensed psychologist or other expert is called and examined by the court, the parties may cross-examine ~~him~~ the qualified psychiatrist, licensed psychologist or other expert in the order directed by the court. When called by either party to the action, any adverse party may examine ~~him~~ the qualified psychiatrist, licensed psychologist or other expert the same as in the case of any other witness.

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§ 7.25 Continued

(i) When any qualified psychiatrist, licensed psychologist or other expert who has examined the defendant, whether or not appointed under this Section, testifies concerning the defendant's mental condition, ~~he~~ the qualified psychiatrist, licensed psychologist or other expert shall be permitted to make a statement as to

- (1) the nature of ~~his~~ the qualified psychiatrist's, licensed psychologist's or other expert's examination,
- (2) ~~his~~ the qualified psychiatrist's, licensed psychologist's or other expert's diagnosis of the mental condition of the defendant at the time of the commission of the offense charged,
- (3) an opinion, if relevant, of the extent to which, the defendant, as a result of mental illness, disease or defect, was incapable of knowing or understanding what ~~he~~ the defendant was doing, or that ~~he~~ the defendant did not know and understand that ~~his~~ the conduct was wrongful, or of the extent to which ~~his~~ the defendant's capacity to control ~~his~~ the defendant's actions was substantially impaired,
- (4) an opinion, if relevant, that the defendant did or did not have the state of mind or capacity to have the state of mind which is in issue during the trial, or
- (5) an opinion, if relevant, of the defendant's competency to be proceeded against or to be sentenced.

The qualified psychiatrist, licensed psychologist or other expert shall be permitted to make an explanation reasonably serving to clarify ~~his~~ the qualified psychiatrist's, licensed psychologist's or other expert's diagnosis and opinion.

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§ 7.25 Specific Issue for Discussion

§ 7.25(i). When any psychiatrist or other expert who has examined the defendant, whether or not appointed under this Section, testifies concerning the defendant's mental condition, he shall be permitted to make a statement as to

...

(4) an opinion, if relevant, that the defendant did or did not have the state of mind or capacity to have the state of mind which is in issue during the trial, or


compare to

Guam Rule of Evidence 704(b)

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

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ATTACHMENT 2 - SUBCOMMISSION ON CRIMINAL PROCEDURE PRESENTATION



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

Table for Review by DOCO and Other Subcommissions

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9 GCA Article 5 (Castle Doctrine Act) as amended by P.L. 37-122 (July 2024)

Amendments shown in redline.

§ 7.112. Home Protection, Use of Deadly Force, Presumption of Fear of Death or Harm.


(a) A person is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily injury to another if:

- (1) the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully or forcefully entered, a business, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the business, residence, or occupied vehicle; and
- (2) the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(3) Provided that the property is enclosed or reasonable notice is placed upon the boundaries of the curtilage, that the property or residence is a no trespassing zone.

For discussion: Curtilage (as defined in § 7.112(d)(6)); reasonable notice of no trespassing zone.

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§ 7.112(d). As used in this Section, the term:

(1) Habitable Property has the meaning provided by § 34.10. Habitable property *as used in this Section* are limited to business buildings for which the victim has beneficial control and use; and residences, vehicles and house boats for which the victim has a legal right to occupy.
Except when used in reference to a residence, habitable property, as used in this Section, does not include yards or surrounding outdoor spaces surrounding business buildings, residences, vehicles or house boats. Nothing herein is construed to limit the right of a victim to use defensive force in a manner consistent with Chapter 7 of Title 9, GCA in areas outside of his/her home, business, car or house boat;

(2) Business means habitable property that is lawfully used to conduct commercial activity by duly licensed corporations, LLCs, partnerships or sole proprietorships;

(3) Residence *as used in this Chapter* means a habitable property, *to include the curtilage of the residence*, in which a person resides, either temporarily or permanently, or is visiting as an invited guest, *or any building or other appurtenance within the curtilage of the residence such as an outdoor kitchen or bathroom;*


(4) Vehicle is defined in § 1102 and § 5101 of Title 16, GCA;

(5) *Curtilage means the area immediately surrounding a residence that is necessary, convenient and habitually used for family purposes and for those activities associated with the sanctity of a person's home;*

(6) Defensive Force has the same meaning as self-defense as used in Chapter 7 of Title 9, GCA, except that a lawful occupant of habitable property has no duty or obligation to retreat.

For discussion: curtilage added by PL 37-122.

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§ 7.113. Immunity from Criminal Prosecution and Civil Action,

(a) As used in this Section, the term *criminal prosecution* includes arresting, detaining in custody, and charging or prosecuting the defendant.

(b) A person who uses force as permitted in § 7.112 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, *except when:*

- (1) the person against whom force was used is a law enforcement officer, as defined by public law, who was acting in the performance of his or her duties, and the officer identified himself or herself in accordance with applicable law; or
- (2) the person using force knew or reasonably should have known that the person was a law enforcement officer;

or

- (3) the use of force is found to be unlawful or was found to have been exercised with any illegal activity.

(c) A law enforcement agency *shall* use standard procedures for investigating the use of force as described in Subsection (b), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(d) The court *shall* award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff *if* the court finds that the defendant is immune from prosecution as provided in Subsection (b).

(e) In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in Subsection (b) of this Section.

For discussion: Possible issues with police determining whether to arrest or detain; subsection (e) new process with clear and convincing standard of proof.

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