

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION
STATUS REPORT TO *I LIHESLATURAN GUÁHAN*
JULY 2024**

I. Introduction and Overview of the Commission.

The Guam Criminal Law and Procedure Review Commission (the “Commission”) was created by *I Liheslaturan Guåhan* in P.L. No. 36-119 (enacted November 9, 2022) to conduct the first complete review of Guam’s Criminal Codes of Guam and Criminal Procedure Codes since their creation by the 13th Guam Legislature in 1976. This public law is included as **Attachment 1** to this report.

Under P.L. No. 36-119, the Commission exists as a division of the Supreme Court of Guam and receives all its administrative support from the Judiciary of Guam, including office space, utilities, computers, and software licenses. The Commission consists of fifteen voting members representing the three branches of government, the Guam Bar Association (to include attorneys with prosecutorial and criminal defense experience), full-time and retired judicial officers, directors of government criminal justice and law enforcement agencies, and private individuals from community-based and public interest organizations relating to the criminal justice system. The Commission is assisted by a number of “ex-officio” non-voting members who contribute to the review of Guam’s criminal laws.

On December 27, 2022, then-Chief Justice F. Philip Carbullido appointed Magistrate Judge Jonathan R. Quan as the Chairman of the Commission. On January 9, 2023, he appointed Attorney Andrew S. Quenga as the Executive Director of the Commission. The Commission formally began operations and held its initial plenary meeting on January 13, 2023.

Under P.L. 36-119, Chairman Quan created four subcommissions to focus on different areas of law and named a chairperson to each subcommission. Members of each subcommission were carefully and deliberately selected by the Chairman based on their experience and practice in criminal law. Each subcommission is composed of members designated by different statutory appointing authorities and includes members from the prosecution and defense bars and local community organizations. The four subcommissions are:

- the Subcommission on Crimes Against Persons,
- the Subcommission on Crimes Relating to Property,
- the Subcommission on Drugs and Other Criminal Offenses, and
- the Subcommission on Criminal Procedure.

At the direction of their Chairpersons, each subcommission is responsible for reviewing its assigned Criminal Code chapters and presenting any recommendations to the entire Commission at public plenary meetings for approval. Since the initial plenary meeting and to the best of their ability, the subcommissions have been meeting in working sessions to review criminal statutes, to

include discussing whether revisions are appropriate, examining statutes from other jurisdictions, and deciding on any recommendations to introduce to the plenary Commission for approval.

This report provides the current status of the Commission’s progress. Included in this report are proposed recommendations that have been preliminarily approved by the Commission and moved to the final review phase. All recommendations presented in this report are subject to further revision and final approval by the Commission.

II. Composition of the Commission.

The table below identifies the voting members of the Commission, their statutory appointing authorities, and the subcommission to which they are assigned. This table includes non-voting, volunteer “ex-officio” members who contribute their expertise to the review of criminal laws. Under P.L. 36-119, the Executive Director and Compiler of Laws are ex-officio, non-voting members of the Commission.

COMMISSION CHAIRMAN	APPOINTED BY
Magistrate Judge Jonathan R. Quan	Chief Justice
SUBCOMMISSION ON CRIMES AGAINST PERSONS	
Attorney Joseph B. McDonald, Chair	GBA President
Attorney Christine Santos Tenorio	Speaker
PDSC Executive Director Stephen Hattori [Designee Dep. Dir. John Morrison]	Statutory Member
GPD Chief Stephen Ignacio [Designee Lt. Ronald Taitano]	Statutory Member
Attorney Sean E. Brown (non-voting)	Volunteer Ex-officio
SUBCOMMISSION ON CRIMES RELATING TO PROPERTY	
Attorney Philip J. Tydingco, Chair	Speaker
Mr. Monty McDowell	Chief Justice
Attorney F. Randall Cunliffe	Chief Justice
Attorney William B. Brennan	GBA President
SUBCOMMISSION ON DRUGS & OTHER CRIMINAL OFFENSES	
Judge Maria T. Cenzon, Chair	Governor
Attorney Michael F. Phillips	Speaker
DOC Director Fred Bordallo [Designee Maj. Antone F. Aguon]	Statutory
Compiler of Laws Geraldine Cepeda, Esq. (non-voting)	Statutory Ex-officio
Ms. Valerie Reyes	Governor
Retired Judge Elizabeth Barrett-Anderson (non-voting)	Volunteer Ex-officio
Attorney Kat Siguenza (non-voting)	Volunteer Ex-officio
SUBCOMMISSION ON CRIMINAL PROCEDURE	
Retired Judge Anita A. Sukola, Chair	Governor
Attorney General Douglas Moylan [Designee Nathan Tennyson]	Statutory
Executive Director Andrew Serge Quenga (non-voting)	Statutory Ex-officio
Attorney Brian Eggleston (non-voting)	Volunteer Ex-officio
Attorney Leonardo M. Rapadas (non-voting)	Volunteer Ex-officio

III. Work of the Commission.

A. Statutory Mandates.

Under P.L. 36-119, the Commission is mandated to review the laws that address the criminal laws of Guam and to recommend enactments, amendments, and repeals to *I Liheslaturan Guåhan*. More specifically, the Commission must conduct a comprehensive and systematic review of the Guam Criminal Procedure Code in Title 8 of the Guam Code Annotated, the Guam Criminal and Correctional Code in Title 9 of the Guam Code Annotated, and other criminal laws outside of Titles 8 and 9. The Commission is required to prioritize the review of the Criminal and Correctional Code, and the focus of all subcommissions has been on Title 9.

The Commission's enabling act provides a timeline of 24 months from the initial plenary meeting to complete its review and submit comprehensive criminal code reform recommendations on all of Title 8 and Title 9, as well as other criminal statutes outside of Titles 8 and 9. The difficulty in meeting this timeline is discussed in this report.

P.L. 36-119 contemplates that this is a working Commission. In conducting their work, statutory and ex-officio members rely heavily on their extensive experience with Guam criminal laws. Many have spent decades prosecuting defendants or defending clients, other members have served as trial court judges in hundreds of criminal cases, and others lead Guam's major law enforcement agencies. Each member has the opportunity to provide critical input on Guam's criminal laws.

B. Subcommittee Working Sessions.

The Chairperson and Executive Directly consult regularly with the Subcommittee Chairpersons to provide guidance and support and to learn how their work is progressing. The primary work of the members occurs at the subcommittee level, during working sessions called by their chairpersons. These working sessions may be in-person, virtual, or both; they may also be done by correspondence in the exchange of draft comments by email or by other electronic means. Review of statutes is very intensive and time-consuming. Guam's criminal codes are based primarily on the Model Penal Code (MPC), members base their review of on other MPC jurisdictions, particularly those cited in the source comments of the Guam statutes. In addition, their review may be based on U.S. jurisdictions with recently reformed or revised criminal codes, such as Hawaii and the District of Columbia. Members identify provisions that are archaic or unused, unconstitutional or inorganic, and contain outdated language, among other issues, and propose recommendations to resolve such issues. Members may recommend amendments, repeals, or recommend no change.

C. Commission Plenary Meetings.

Recommendations approved by subcommissions are presented at Commission plenary meetings for discussion by all members and approval by majority vote. Since the start of operations in January of 2023, the subcommissions have conducted dozens of working sessions since January of 2023 and the plenary commission has held at total of nine public meetings—six in 2023, three already in 2024, and will hold three more before the end of this year. Note that P.L. 36-119 requires

only one plenary meeting every six months. The commission has greatly exceeded that requirement in order to push its review of Guam criminal laws as expeditiously as possible. In the nine plenary meetings held so far, the Commission has always met its quorum requirement.

Many laws enforced by the Government of Guam agencies have associated criminal penalties. Commission staff has referred specific criminal laws to various Government of Guam departments such as the Department of Labor, Department of Public Health and Social Services, Department of Revenue and Taxation, and the Guam Election Commission for comment. Commission staff is also referring specific laws to Judiciary of Guam divisions, such as Probation and Client Services for input.

All the Commission's work to date is posted on its webpage. The Commission believes it is in the public interest for all its work to be available for the public to review, and as required by the Open Government Law, every presentation made by subcommissions at any plenary meeting of the Commission is included in the meeting packets posted on the Commission webpage. In addition, all plenary meeting YouTube video links and the approved minutes of each plenary meeting are posted on the webpage. All quarterly reports through the first quarter of 2024 are posted on the webpage and this report will also be posted.

D. Status of Commission Reviews.

Title 9 (the Criminal and Correctional Code) consists of 46 chapters and over 800 sections. Title 8 (the Criminal Procedure Code) consists of 35 chapters and over 400 sections. Outside of Titles 8 and 9, there are nearly 500 sections referencing a misdemeanor or felony offense. Review of the statutes has been a formidable task.

Initially, the Subcommittee on Criminal Procedure was assigned all of Title 8 to review, and the Title 9 chapters were divided among the other three subcommissions based on the nature of the criminal offenses. Crimes against persons were assigned to the Subcommittee on Crimes Against Persons. Property related crimes were assigned to the Subcommittee on Crimes Relating to Property. Correctional chapters and crimes involving drugs and miscellaneous offenses were assigned to the Subcommittee on Drugs & Other Criminal Offenses. However, because the Commission's enabling law prioritizes Title 9, the Subcommittee on Criminal Procedure was directed by the Chairman to focus on several Title 9 chapters. Before turning its attention to Title 9, the Subcommittee on Criminal Procedure completed a cursory review of all Title 8 chapters but has not yet presented any of its recommendations to the Commission. Once Title 9 is complete, the Commission will focus on Title 8 and all other criminal laws in the GCA.

The attachments to this report provide the status of the review of Title 9 chapters through the most recent plenary meeting of June 13, 2024. **Attachment 2** presents the status of subcommission work on a chapter-by-chapter basis. Attachment 2 shows which chapters have been presented to the Plenary Commission and either approved for the final review phase or tabled for further discussion. It also shows the chapters that have yet to be presented to the Plenary Commission. A total of 26 Title 9 chapters have been presented to the Plenary Commission. Of the 26 chapters, 18 were moved to the final review phase, and 8 were tabled for further review and discussion. Nineteen

Title 9 chapters are left to be reviewed and presented to the Plenary Commission in the first review phase.

Attachment 3 shows a more detailed, section-by-section review. Attachment 3 indicates whether a section has been recommended for amendment, repeal, repeal, and reenactment or if no change was recommended.

Attachment 4 shows the first phase recommendations approved by the Plenary Commission for each chapter that has been presented. Attachment 4 shows the recommendations in blackline edits. Amendments adding new language are underlined, and amendments deleting existing language are struck-through. Commission comments are included to explain the recommendations. Together, the three attachments show the status of the Commission's review.

The status of review of Guam's criminal laws is summarized as follows:

- Title 9 (The Criminal and Correctional Code).
 - 18 chapters presented and approved through Phase 1.
 - 8 chapters presented and tabled for further discussion.
 - 20 chapters are pending subcommission review and presentation.
- Title 8 (The Criminal Procedure Code).
 - 35 chapters initially reviewed and pending presentation.
- Other criminal laws.
 - Pending review and presentation.

E. Moving Forward.

As reflected in this status report, posted meeting materials, and quarterly reports, the subcommissions have been working diligently and progress has been steadfast to the best of members' ability. However, the difficulties faced by the Commission in conducting a comprehensive statutory review process for the first time nearly half a century has been daunting. The Commission has found some guidance and benefit from the methods used by other jurisdictions that have recently revised their criminal codes, the Commission has had to break new ground and formulate through trial and error, the most efficient processes for its own review of Guam's criminal laws.

It should be noted that nearly all members and ex-officio members are attorneys in the private and government sectors, to include attorneys from the Office of the Attorney General, Public Defender Service Corporation, Guam Legal Services Corporation, and private sector court-appointed attorneys. Members also include two full-time judicial officers with considerable caseloads and work obligations. The ability of our members to meet in working sessions and review the criminal codes is affected by their heavy client and litigation obligations, which are governed by legal and ethical responsibilities. Moreover, severe weather conditions in the Commission's first year of operations (Supertyphoon Mawar) significantly hampered members' ability to review criminal statutes for more than three months.

Under P.L. 36-119, the Commission is required to submit a final report on its comprehensive criminal code reform recommendations within 24 months of its initial meeting. That period will end on January 13, 2025. However, given that Commission members are volunteers with demanding work, client and litigation schedules, and other reasons set forth in this report, it is anticipated that the Commission will not be able to complete its full review of all of Title 9, Title 8, and all other criminal laws in the GCA by that date.

In order to continue the work of the Commission, the Judiciary of Guam's Fiscal Year 2025 budget request includes a status quo appropriation for the Commission in the amount of \$378,845 and a request to amend P.L. 36-119 to provide an additional 24 months to complete its review and submit a final report. The additional time should be sufficient to conduct a complete review of Guam criminal laws.

IV. Conclusion.

The Commission is committed to fulfilling its obligation to review all of Guam's criminal laws and will continue to work to the best of the ability of each member. Our subcommissions have the daunting task of reviewing thousands of criminal statutes throughout the GCA. Aside from the very small full-time staff of the CLRC, each member must devote significant time to reviewing their assigned chapters and sections proposed changes in working sessions with their respective subcommissions. Members consist almost entirely of full-time attorneys with clients and litigation caseloads, high-ranking government law enforcement officials, and private citizens with full-time work obligations. Chairman Quan and I thank all members for their commitment and diligence to the work of the Commission. We thank the Judiciary of Guam and Chief Justice Torres, and Administrator of the Courts Rosete for their administrative support. We thank Senator Blas and other sponsors of our enabling legislation and the entire Legislature for support of our mission.

I MINA'TRENTAI SAIS NA LIHESLATURAN GUAHAN
2022 (SECOND) Regular Session

Bill No. 311-36 (COR)

As amended by the Committee on General
Government Operations, Appropriations, and Housing;
and further amended in the Committee of the Whole.

Introduced by:

Frank Blas Jr.
Joe S. San Agustin
Therese M. Terlaje
Joanne Brown
Telo T. Taitague
Tina Rose Muna Barnes
Sabina Flores Perez
Clynton E. Ridgell
Mary Camacho Torres
V. Anthony Ada
Christopher M. Dueñas
James C. Moylan
Telena Cruz Nelson
Amanda L. Shelton
Jose "Pedo" Terlaje

**AN ACT TO *ADD* A NEW CHAPTER 25 TO TITLE 1,
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING A GUAM CRIMINAL LAW AND
PROCEDURE REVIEW COMMISSION FOR THE
PURPOSE OF UPDATING TITLE 8 AND TITLE 9 OF
THE GUAM CODE ANNOTATED.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that it has been nearly fifty (50) years since the last comprehensive review of Guam's
4 laws on crimes and criminal procedure through the work of the Guam Law Revision
5 Commission created by Public Law 12-93 (1974). The work of the Law Revision

1 Commission resulted in the enactment of Public Law 13-185, which established the
2 Criminal and Correctional Code (1976); Public Law 13-186, which established the
3 Criminal Procedure Code (1976); and Public Law 13-187, which amended existing
4 Guam laws to conform with the terminology of the two (2) newly-adopted codes
5 (1976). In 1980, the Fifteenth (15th) Guam Legislature adopted the new Guam Code
6 Annotated (GCA) as Guam's statutory code, establishing Title 8 of the GCA as the
7 Criminal Procedure Code, and Title 9 of the GCA as the Criminal and Correctional
8 Code.

9 *I Liheslaturan Guåhan* further finds that since the comprehensive review of
10 the Guam Law Revision Commission, the amendments, additions, and repeals of
11 Guam's criminal laws have been on a piecemeal basis, and as a result, the laws and
12 procedures used to prosecute criminal behavior may, in some cases, be unnecessary,
13 unclear, duplicative, overly broad, or otherwise, insufficient to serve the purpose of
14 the law.

15 Since this review, there have been amendments to 48 U.S.C. § 1421 et seq. of
16 the Organic Act of Guam to recognize the authority of the Supreme Court of Guam
17 as a separate and co-equal branch of the government of Guam, and to give the
18 Supreme Court the authority to “make and promulgate rules governing the
19 administration of the judiciary and the practice and procedure in the courts of the
20 judicial branch of Guam[.]” [48 U.S.C.A. § 1424-1(a)(6)].

21 Therefore, it is the intent of this legislation to create a commission composed
22 of key stakeholders and experts to review the laws that address the criminal
23 procedures and criminal laws of Guam and to recommend enactments, amendments
24 and repeals to *I Liheslaturan Guåhan* for action.

25 **Section 2.** A new Chapter 25 is *added* to Title 1, Guam Code Annotated, to
26 read:

27 **“CHAPTER 25**

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

2 § 25.01. Short Title.

3 § 25.02. Establishment; No Derogation of Organic Act Authority.

4 § 25.03. Duties and Responsibilities.

5 § 25.04. Composition.

6 § 25.05. Executive Director.

7 § 25.06. Meetings.

8 § 25.07. Reporting Requirements.

9 § 25.08. Administrative Support.

10 **§ 25.01. Short Title.**

11 This Act shall be known as the *Guam Criminal Law and Procedure Review*
12 *Commission Act.*

13 **§ 25.02. Establishment; No Derogation of Organic Act Authority.**

14 (a) There is created the Guam Criminal Law and Procedure Review
15 Commission (Commission) to review the laws that address the criminal procedures
16 and criminal laws of Guam; and to recommend enactments, amendments, and
17 repeals to *I Liheslaturan Guåhan* for action.

18 (b) Neither this Act, nor the duties and responsibilities of the Commission
19 established here, shall derogate, limit, or circumvent the authority of the Supreme
20 Court of Guam to make and promulgate rules governing the administration of the
21 judiciary and the practice and procedure in the courts of the judicial branch of Guam
22 granted by 48 U.S.C.A. § 1424-1(a)(6).

23 **§ 25.03. Duties and Responsibilities.**

24 (a) The Commission shall conduct a comprehensive and systematic review
25 of Guam laws, including the Guam Criminal Procedure Code codified in Title 8 of
26 the Guam Code Annotated (GCA), the Guam Criminal and Correctional Code
27 codified in Title 9 of the GCA, and other provisions in the statutory code and session

1 laws of Guam relating to criminal law or procedure.

2 (b) In preparing the criminal code reform recommendations required by
3 Subsection (a) of this Section, the Commission may:

4 (1) review criminal codes and code reform efforts in other
5 jurisdictions, the American Law Institute Model Penal Code, including
6 recently proposed amendments, and other criminal law resources;

7 (2) consult with other Guam, federal, and state departments and
8 agencies, conduct community outreach, and engage in other activities to
9 advance the Commission's statutory duties; and

10 (3) prioritize the review of Title 9.

11 (c) At the conclusion of its review, the Commission shall submit
12 comprehensive criminal code reform recommendations to the Chief Justice of the
13 Supreme Court of Guam, *I Maga'hågan Guåhan*, and the Speaker of *I Liheslaturan*
14 *Guåhan* within twenty-four (24) months of the initial meeting described in § 25.06
15 of this Chapter.

16 (d) The Commission may contract for any professional services if such
17 services cannot be satisfactorily performed by its employees.

18 (e) The Commission shall study and report on any relevant topic which *I*
19 *Liheslaturan Guåhan*, by resolution, shall refer to the Commission for action.

20 (f) After completion of the review and submission of the recommendations
21 required in this Section, the Commission shall, subject to additional appropriations
22 by *I Liheslaturan Guåhan*, conduct periodic reviews, but not less than every five (5)
23 years, of Guam's criminal laws under the provisions set forth in this Chapter to
24 recommend amendments or repeals to bring the criminal laws of Guam into harmony
25 with modern conditions.

26 **§ 25.04. Composition.**

27 (a) The Commission shall be composed as follows:

1 (1) three (3) members appointed by the Chief Justice, of whom one
2 (1) shall be a member of the general public with experience and interest in the
3 services provided by community-based and public interest organizations
4 relating to the criminal justice system;

5 (2) three (3) members appointed by *I Maga'hågan Guåhan*, of whom
6 one (1) shall be a member of the general public with experience and interest
7 in the services provided by community-based and public interest
8 organizations relating to the criminal justice system;

9 (3) three (3) members appointed by the Speaker of *I Liheslaturan*
10 *Guåhan*, of whom one (1) shall be a member of the general public with
11 experience and interest in the services provided by community-based and
12 public interest organizations relating to the criminal justice system, and may
13 hold a degree in Human Services or a related field, including the Social
14 Sciences;

15 (4) the Attorney General of Guam, or his or her designee;

16 (5) the Executive Director of the Public Defender Service
17 Corporation, or his or her designee;

18 (6) the Chief of the Guam Police Department, or his or her designee;

19 (7) the Director of the Department of Corrections, or his or her
20 designee;

21 (8) the Compiler of Laws, who shall serve as an ex-officio non-
22 voting member; and

23 (9) the Executive Director of the Commission, who shall serve as an
24 ex-officio non-voting member.

25 (10) two (2) members of the Guam Bar Association appointed by the
26 President of the Guam Bar Association.

27 (b) As a result of their participation in the Commission, members shall not

1 be subject to legislative confirmation, and shall not be subject to the public official
2 reporting requirements in 4 GCA, Chapter 13.

3 (c) Commission members shall be appointed or designated within sixty
4 (60) days of enactment of this Chapter, and shall serve until the submission of the
5 report described in § 25.07 of this Chapter, unless replaced by the appointing or
6 designating authority. Any vacancy in Commission membership shall be filled
7 expeditiously by the appointing or designating authority, so as to not impede the
8 work of the Commission.

9 (d) The Chair of the Commission shall be an appointee of the Chief Justice,
10 and shall be a judicial officer.

11 (e) The Chair of the Commission shall have the authority to create different
12 subcommittees from among its members to focus on different areas of law and to
13 report back to the entire Commission on findings and recommendations, and the
14 Chair of the Commission shall appoint a chairperson for each subcommittee.

15 (f) The appointees in this Section who are employees of any branch of the
16 government of Guam may participate in the duties and responsibilities of the
17 Commission if such participation is compatible with the ethical duties of their
18 respective offices and positions.

19 **§ 25.05. Executive Director.**

20 (a) There is created the position of Executive Director of the Commission,
21 who shall be responsible for and oversee the operations of the Commission; develop
22 and institute internal policies, procedures, and processes to ensure efficient
23 operations; and assume such duties and responsibilities as delegated and assigned by
24 the Commission.

25 (b) In addition to any other qualifications which may be established, the
26 Executive Director shall be an attorney licensed to practice in Guam; and shall be in
27 good standing in every jurisdiction where he or she is licensed to practice law.

1 (c) The Executive Director shall be appointed by the Chief Justice, and
2 shall be a full-time, unclassified employee of the Judiciary compensated and subject
3 to removal in accordance with Judiciary of Guam Personnel Rules and Regulations
4 adopted and promulgated by the Judicial Council, and shall be administratively
5 supported by the Judiciary.

6 (d) In the exercise of his or her responsibilities under this Chapter, the
7 Executive Director may:

8 (1) work closely with the Compiler of Laws in all aspects of
9 searching and researching the GCA and the laws of Guam;

10 (2) request and utilize the services of any bar association, legislative
11 committee, legislative office, profession, or other organization in any matter
12 suitable for fulfilling the purposes of this Chapter;

13 (3) have access to any legislative, executive, or judicial reports,
14 opinions, orders, or documents necessary to carry out the purposes of this
15 Chapter; and

16 (4) conduct meetings, formal or informal, with attorneys,
17 representatives from government entities, private sector businesses,
18 community-based organizations, and others interested in the results and work
19 of the Commission.

20 **§ 25.06. Meetings.**

21 (a) Initial Meeting. The Commission shall hold an initial planning and
22 organizational meeting within thirty (30) days of the appointment of the Executive
23 Director. Thereafter, the Commission shall hold regular meetings as necessary to
24 fulfill the statutory responsibilities of the Commission.

25 (b) Plenary Meetings. The Commission shall hold a plenary meeting,
26 consisting of all members of the Commission, at least once every six (6) months.

27 (1) A majority of all Commission members shall constitute a quorum

1 for a plenary meeting.

2 (2) A formal vote on the recommendations in the final report under
3 § 25.07(b) of this Chapter shall be conducted only during plenary meetings.

4 (3) A recommendation must receive at least eight (8) votes in favor
5 in a plenary meeting to be included in the final report under § 25.07(b).

6 (4) Plenary meetings shall be subject to the Open Government
7 Law, codified at 5 GCA Chapter 8.

8 (5) Plenary meetings shall be scheduled by the Chair of the
9 Commission.

10 (c) Subcommittee Meetings. Members of subcommissions shall meet
11 regularly to fulfill the statutory duties of the Commission.

12 (1) Subcommittee meetings shall serve as working sessions for
13 members to conduct discussions to further the Commission's duties and
14 responsibilities under § 25.03 of this Chapter. A subcommission shall prepare
15 its findings and recommendations, and present them to the entire Commission
16 for consideration.

17 (2) Subcommittee meetings shall not be subject to the Open
18 Government Law, codified at 5 GCA, Chapter 8.

19 (3) There is no quorum requirement for subcommission meetings.

20 (4) Subcommittee meetings may be scheduled by the Chair of the
21 Commission, the Executive Director, or a subcommission chairperson.

22 (d) Commission meetings may be conducted in-person or virtually, and
23 members may attend in-person, by videoconference, or by teleconference.

24 **§ 25.07. Reporting Requirements.**

25 (a) Progress Reports. The Commission shall submit progress reports to the
26 Chief Justice, *I Maga'hāgan Guāhan*, and the Speaker of *I Liheslaturan Guāhan*
27 each quarter; and these reports shall be a summary of Commission activities during

1 the prior quarter.

2 (b) Final Report. The Commission shall submit comprehensive criminal
3 code reform recommendations as required by § 25.03(c) of this Chapter, which shall
4 include proposed legislation for the revision of Title 8 and Title 9 of the GCA, and
5 other provisions in the statutory code relating to criminal law and procedure. The
6 report and proposed legislation should:

7 (1) use clear and plain language;

8 (2) apply consistent definitions;

9 (3) describe all elements, including mental states, that must be
10 proven;

11 (4) reduce unnecessary overlap and gaps between criminal offenses;

12 (5) eliminate archaic and unused offenses;

13 (6) adjust penalties, fines, and the gradation of offenses to provide
14 for proportionate penalties;

15 (7) organize existing criminal statutes in a logical order;

16 (8) identify any crimes defined in common law that should be
17 codified, and propose recommended language for codification;

18 (9) identify criminal statutes held to be unconstitutional and
19 recommend their removal or amendment;

20 (10) propose such other amendments as the Commission believes are
21 necessary; and

22 (11) articulate specific steps for implementing the recommendations.

23 **§ 25.08. Administrative Support.**

24 (a) Administrative support for the Commission shall be provided through
25 the Judiciary of Guam for any assistance required by the Commission, or hearing to
26 be held under this Chapter.

27 (b) The Judiciary shall provide technical, clerical, and administrative

1 support to the Commission. In exercising the responsibilities in this Chapter, the
2 Judiciary may:

- 3 (1) accept grants, contributions, and appropriations;
- 4 (2) employ such professional or clerical staff as necessary for the
5 operations of the Commission, under the Personnel Rules and Regulations of
6 the Judicial Branch promulgated by the Judicial Council; and
- 7 (3) enter into contracts as necessary for the operations of the
8 Commission, under the law and the rules and regulations promulgated by the
9 Judicial Council.

10 (c) The Office of the Compiler of Laws shall provide technical and other
11 assistance to the Commission, to the extent such assistance does not conflict with
12 the duties of the Compiler of Laws as set forth in 1 GCA, Chapter 16 and Judiciary
13 of Guam Personnel Rules and Regulations. The Compiler of Laws shall ensure that
14 assistance provided to the Commission does not conflict with his or her duties to the
15 Guam Code Advisory Commission under 1 GCA, Chapter 16, § 1611.”

16 **Section 3. Funding.** There is appropriated Two Hundred Fifty Thousand
17 Dollars (\$250,000) from the Audited Fiscal Year 2022 General Fund surplus balance
18 to carry out the purposes of this Act.

19 **Section 4. Effective Date.** This Act shall be effective upon enactment.

20 **Section 5. Severability.** If any provision of this Act or its application to any
21 person or circumstance is found to be invalid or contrary to law, such invalidity shall
22 not affect other provisions or applications of this Act that can be given effect without
23 the invalid provision or application, and to this end the provisions of this Act are
24 severable.

ATTACHMENT 2 – TITLE 9 CHAPTER STATUS

Note:

- Crim Pro - Subcommission on Criminal Procedure
- Persons - Subcommission on Crimes Against Persons
- Property - Subcommission on Crimes Relating to Property
- DOCO - Subcommission on Drugs & Other Criminal Offenses
- Chapters are subject to further revision

CHAPTER	TITLE	SUBCOMMISSION	STATUS (PHASE 1)
1	Preliminary Provisions Definitions	Crim Pro	Presented Complete
4	General Principles of Liability	Crim Pro	Presented Complete
7	Exemptions & Defenses	Crim Pro	Presented Tabled
13	Attempt, Solicitation, Conspiracy	Property	Not Presented
16	Homicide	Persons	Presented Complete
17	Unborn Victims of Violence	Persons	Not Presented
19	Assault, Reckless Endangering, Terrorizing	Persons	Not Presented
22	Kidnapping and Related Offenses	Persons	Not Presented
25	Sexual Offenses	Persons	Not Presented
25A	Solicitation of Children and Child Pornography	Persons	Not Presented
26	Human Trafficking and Criminal Exploitation Act of 2009	Persons	Not Presented
28	Public Indecency	DOCO	Not Presented
30	Family Violence	DOCO	Not Presented
31	Offenses Against the Family	Persons	Not Presented
32	Financial Exploitation of the Elderly and Individuals with Disabilities	Property	Presented Complete
34	Arson, Negligent Burning, Criminal Mischief	Property	Presented Complete
37	Burglary	Property	Presented Complete
40	Robbery	Persons	Presented Complete
43	Theft and Related Offenses	Property	Presented Complete
46	Forgery, Fraudulent Practices & Telephone Records	Property	Presented Complete
47	Trademark Counterfeiting Act	Property	Presented Complete
48	Notification of Breaches of Personal Information	Property	Presented Complete
49	Governmental Bribery, Other Unlawful Influence and Related Offenses	DOCO	Not Presented
52	Perjury and Offenses Against the Integrity of Official Proceedings	DOCO	Not Presented
55	Interference with Governmental Operations and Law Enforcement	DOCO	Not Presented
58	Escape and Related Offenses	DOCO	Not Presented
61	Riot, Disorderly Conduct and Related Offenses	DOCO	Not Presented
64	Gambling	DOCO	Not Presented
67	Guam Uniform Controlled Substances Act	DOCO	Not Presented
69	Antitrust Law	Property	Not Presented
70	Miscellaneous Crimes	Property	Presented Complete
71	The Guam Gun-Free School Zone Act of 2004	Crim Pro	Presented Complete
80	Disposition of Offenders	Crim Pro	Presented Tabled
81	Reduction of Sentences	Crim Pro	Presented Tabled
82	Loss and Restoration of Rights Incident to Conviction or Imprisonment	Crim Pro	Presented Tabled
83	Youth Corrections Act	Crim Pro	Not Presented
84	Rehabilitative and Development Program	Crim Pro	Presented Tabled
85	Territorial Parole Board	Crim Pro	Presented Tabled
86	Compensation for Damages from Criminal Activities	Crim Pro	Presented Complete
87	Victim Notification	Crim Pro	Presented Complete
88	Criminal Justice Substance Abuse Act	Crim Pro	Presented Tabled
89	Crimes Against Minors and Sex Offender Registry	Crim Pro	Presented Tabled
90	Corrections	DOCO	Presented Complete
91	Infant Child's Right to Life Act	Persons	Presented Complete
92	Safe Streets Act of 2018	DOCO	Not Presented
93	Criminal Sexual Conduct Assessment And Rehabilitation Act	Crim Pro	Presented Complete

ATTACHMENT 3 – TITLE 9 SECTION STATUS

Note: section status is subject to further revision.

CHAPTER AND SECTION	TITLE	STATUS
Chapter 1	Preliminary Provisions Definitions	
§ 1.10.	Short Title, Criminal and Correctional Code.	Amend
§ 1.12.	Severability.	Repeal and Reenact
§ 1.14.	Purpose for Defining Offenses.	Amend
§ 1.16.	Territorial Applicability.	Amend
§ 1.18.	Classes of Crimes.	Amend
§ 1.19.	Felonies Defined and Classified.	Amend
§ 1.20.	Relationship of Code to Other Laws; Contempts, Penalties and Remedies.	Amend
§ 1.22.	Prosecution for Conduct Which Constitutes More Than One Offense.	Amend
§ 1.24.	Double Jeopardy. Same Offense.	Amend
§ 1.26.	Double Jeopardy. Different Offense.	Amend
§ 1.28.	Concurrent Jurisdiction -When a Bar to Prosecution.	Amend
§ 1.30.	Former Prosecutions. When Not a Bar to Present Prosecution.	Amend
§ 1.34.	Rules of Construction.	Repeal and Reenact
§ 1.36.	Headings.	Repeal and Reenact
§ 1.38.	Amendments Included.	Repeal and Reenact
§ 1.42.	Tenses.	Repeal and Reenact
§ 1.44.	Gender.	Repeal and Reenact
§ 1.46.	Number.	Repeal and Reenact
§ 1.48.	Shall and May.	Repeal and Reenact
§ 1.50.	Military Authority.	No Change
§ 1.60.	General Definitions Applicable to Entire Title	Repeal
§ 1.70.	Peace Officer	No Change
§ 1.80.	Territory	Repeal
Chapter 4	General Principles of Liability	
§ 4.10	Conduct to Include Voluntary Act or Omission.	No Change
§ 4.15	Voluntary Act Defined.	No Change
§ 4.20	Liability for Omission Limited.	No Change
§ 4.25	Culpability.	No Change
§ 4.30	Culpability Defined.	No Change
§ 4.35	Culpability Applied to Elements of Offense.	Amend
§ 4.40	Culpable Mental State Generally Required.	No Change
§ 4.45	Same: When Inapplicable.	Amend
§ 4.50	Causation Established and Defined.	Amend
§ 4.55	Guilt Established by Causing or Aiding Innocent Party in Commission of Crime.	No Change
§ 4.60	Guilt Established by Complicity.	No Change
§ 4.65	Criminal Facilitation Established and Punished.	No Change
§ 4.70	Criminal Liability for Acts of Another: Non-Availability of Certain Defenses.	Amend
§ 4.75	Same: Defenses Available.	Amend
§ 4.80	Criminal Liability of Corporations.	No Change
Chapter 7	Exemptions and Defenses	
§ 7.10	Exemption from Criminal Liability Due to Juvenile Status	Amend
§ 7.16.	Defense: Mental Disease or Defect.	No Change
§ 7.19.	Same: Admissibility of Evidence Showing.	Amend
§ 7.22.	Same: Procedure for Assertion of.	Amend
§ 7.25.	Psychiatric Examination and Procedure.	No Change
§ 7.28.	Acquittal: Order for Civil Commitment.	No Change
§ 7.31.	Acquittal: Verdict Must State Reason as Mental Disease Defect.	Amend
§ 7.34.	Acquittal: Court Order of Commitment or Release; Petition for Discharge.	Amend-Tabled
§ 7.37.	Mental Disease: A Bar to Proceeding or Sentence.	No Change
§ 7.40.	Same: Hearing to Determine.	Amend
§ 7.43.	Same: Hearing Procedure for Commitment and Release.	Amend
§ 7.46.	Same: Commitment as Exonerating Bail.	Amend

ATTACHMENT 3 – TITLE 9 SECTION STATUS

CHAPTER AND SECTION	TITLE	STATUS
§ 7.49.	Same: Hearing and Procedure When Mental Disease or Defect Occurs After Sentence.	Amend
§ 7.52.	Transfer of Committed Person Off-Island: Hearing and Notice to Attorney General Required.	No Change
§ 7.55.	Specific Defenses Defined and Allowed.	Amend
§ 7.58.	Intoxication.	No Change
§ 7.61.	Duress or Necessity.	No Change
§ 7.64.	Other Defenses.	Amend
§ 7.67.	Appropriateness of Prosecution.	Amend
§ 7.70.	Entrapment as Affirmative Defense.	Amend
§ 7.73.	Specific Defense Defined and Allowed; Ignorance or Mistake; Intoxication; Duress, Compulsion; Consent; De Minimus Infractions; Entrapment; and Renunciation.	Amend
§ 7.76.	Deadly Force Defined.	Tabled
§ 7.78.	Justification a Defense; Civil Remedies Not Impaired by Article.	Tabled
§ 7.80.	Necessity Defined and Allowed.	Tabled
§ 7.82.	Execution of Public Duty Defined and Allowed.	Tabled
§ 7.84.	Self-Defense Defined and Allowed.	Tabled
§ 7.86.	Self-Defense Limited.	Tabled
§ 7.88.	Force in Defense of Third Persons: Defined and Allowed.	Tabled
§ 7.90.	Force in Defense of Property: Defined and Allowed.	Tabled
§ 7.92.	Use of Force in Law Enforcement.	Tabled
§ 7.94.	Use of Force by Person Having Special Care, Duty or Responsibility for Another.	Tabled
§ 7.96.	When Force Allowed by §§ 7.94 and 7.96 is Unavailable.	Tabled
§ 7.98.	Justification in Seizure of Property.	Tabled
§ 7.111.	Legislative Findings and Intent.	Tabled
§ 7.112.	Home Protection, Use of Deadly Force, Presumption of Fear of Death or Harm.	Tabled
§ 7.113.	Immunity from Criminal Prosecution and Civil Action.	Tabled
§ 7.114.	Severability.	Tabled
Chapter 16	Criminal Homicide	
§ 16.10.	Definitions Applicable to Chapter.	No Change
§ 16.20.	Criminal Homicide Defined.	No Change
§ 16.30.	Aggravated Murder Defined.	Amend
§ 16.40.	Murder Defined.	Amend
§ 16.50.	Manslaughter Defined and Classified.	Amend
§ 16.60.	Negligent Homicide Defined and Classified.	No Change
Chapter 19	Assault, Reckless Endangering, Terrorizing	
§ 19.10.	General Definitions.	No Change
§ 19.20.	Aggravated Assault; Defined and Punished.	No Change
§ 19.30.	Assault; Defined and Punished.	No Change
§ 19.40.	Reckless Conduct; Defined and Punished.	No Change
§ 19.50.	Terroristic Conduct; Defined and Punished.	No Change
§ 19.60.	Terrorizing; Defined and Punished.	Amend
§ 19.69.	Definitions.	No Change
§ 19.70.	Stalking.	No Change
§ 19.80.	Strangulation; Defined and Punished.	No Change
§ 19.81.	Interfering with the Reporting of Family Violence; Defined & Punished.	No Change
Chapter 31	Offenses Against The Family	
§ 31.10.	Bigamy; Defined & Punished.	No Change
§ 31.15.	Incest; Defined & Punished.	No Change
§ 31.20.	Abortion.	No Change
§ 31.21.	Illegal Abortions Punished.	No Change
§ 31.22.	Refusal to Participate in Abortion.	No Change
§ 31.30.	Child Abuse; Defined & Punished.	No Change
§ 31.35.	Reporting of Suspected Child Abuse to DPHSS.	No Change

ATTACHMENT 3 – TITLE 9 SECTION STATUS

CHAPTER AND SECTION	TITLE	STATUS
§ 31.37.	Registry of Cases of Suspected Child Abuse Reported to DPHSS.	No Change
§ 31.40.	Abuse of an Incompetent: Defined & Punished.	No Change
§ 31.45.	Failure to Provide; Defined & Punished.	No Change
§ 31.50.	Surety for Support.	No Change
§ 31.55.	Fine Imposed May be Used for Support.	No Change
§ 31.60.	Criminal Spouse Abuse: Penalty. [Repealed]	No Change
§ 31.65.	Curfew Hours for Minors.	No Change
§ 31.70.	Leaving Children Unattended or Unsupervised in Motor Vehicles; Penalty; Authority of Law Enforcement Officer.	No Change
Chapter 32	Financial Exploitation of the Elderly and Individuals with Disabilities	
§ 32.10.	General Definitions.	Repeal - Tabled
§ 32.20.	Financial Exploitation of an Elderly Person or Individual with a Disability: Defined.	Repeal - Tabled
§ 32.30.	Permissive Presumption of Exploitation.	Repeal - Tabled
§ 32.40.	Financial Exploitation of an Elderly Person or Individual with a Disability: Punished.	Repeal - Tabled
§ 32.50.	Evidentiary Hearing Required for Custody of Property Determination.	Repeal - Tabled
Chapter 34	Arson, Negligent Burning, Criminal Mischief	
§ 34.10.	Definitions.	No Change
§ 34.20.	Aggravated Arson; Defined & Punished.	No Change
§ 34.30.	Arson; Defined & Punished.	No Change
§ 34.40.	Negligent Burning; Defined & Punished.	Amend
§ 34.50.	Criminal Mischief; Defined.	No Change
§ 34.60.	Criminal Mischief; Punished.	Amend
§ 34.70.	Graffiti Prohibited.	Amend
§ 34.80.	Use of Fines Collected.	No Change
§ 34.90.	Destruction of Property: Penalty.	No Change
Chapter 37	Burglary and home invasion	
§ 37.10.	Definitions: Ref. to § 16.10.	No Change
§ 37.20.	Burglary: Defined. Punishment Classified.	Amend
§ 37.30.	Criminal Trespass: Defined, Punished, Defenses.	No Change
§ 37.40.	The Breaking of Window Glass to Gain Access to Vehicles.	Repeal
§ 37.210.	Home Invasion.	No Change
§ 37.220.	In the Course of Committing Home Invasion.	No Change
§ 37.230.	Knowledge of Occupancy is Not a Defense.	No Change
§ 37.240.	Home Invasion Punished.	No Change
§ 37.310.	Carjacking.	No Change
§ 37.320.	Armed Carjacking.	No Change
§ 37.330.	In the Course of Committing Carjacking or Armed Carjacking.	No Change
§ 37.340.	Knowledge of Occupancy is not a Defense.	No Change
§ 37.250.	Carjacking Punished.	No Change
§ 37.260.	Armed Carjacking Punished.	No Change
Chapter 40	Robbery	
§ 40.10.	1st Degree Robbery; Defined & Punished.	No Change
§ 40.20.	2nd Degree Robbery; Defined & Punished.	No Change
§ 40.30.	3rd Degree Robbery; Defined & Punished.	No Change
§ 40.40.	Definition of an Act.	No Change
§ 40.50.	No Defense of "Claim of Right".	No Change
Chapter 43	Theft And Related Offenses	
§ 43.10.	Definitions.	No Change
§ 43.15.	Theft a Single Offense.	No Change
§ 43.20.	Theft; Defined & Punishment Classified.	Amend
§ 43.21.	Theft of Utilities.	No Change
§ 43.25.	Defenses; Conditions Upon Same.	No Change
§ 43.30.	Theft of Property; Defined.	No Change
§ 43.31.	Crime Against the Community; Defined and Punishment.	Amend -Tabled

ATTACHMENT 3 – TITLE 9 SECTION STATUS

CHAPTER AND SECTION	TITLE	STATUS
§ 43.35.	Theft by Deception; Defined.	No Change
§ 43.40.	Theft by Threatening; Defined; Defense.	No Change
§ 43.45.	Theft of Property Lost, Mislaid or Delivered by Mistake; Defined.	No Change
§ 43.50.	Theft by Receiving Stolen Property; Defined.	No Change
§ 43.51.	Theft of Utilities.	No Change
§ 43.55.	Theft of Services; Defined.	No Change
§ 43.56.	Unauthorized Reception of Cable Services.	No Change
§ 43.60.	Theft of Property Held in Trust; Defined.	No Change
§ 43.65.	Unauthorized Use of Vehicle: Defined; Punished; Defense.	No Change
§ 43.70.	Reimbursement to Owner of Stolen Livestock.	No Change
§ 43.75.	Theft of Dog or Cat, When a Felony of the Second Degree.	No Change
§ 43.80.	General Definitions.	No Change
§ 43.81.	Conceal Defined.	No Change
§ 43.82.	Full Retail Value Defined.	No Change
§ 43.83.	Merchandise Defined.	No Change
§ 43.84.	Merchant Defined.	No Change
§ 43.85.	Minor Defined.	No Change
§ 43.86.	Person Defined.	No Change
§ 43.87.	Peace Officer Defined.	No Change
§ 43.88.	Premises of a Retail Mercantile Establishment Defined.	No Change
§ 43.89.	Shopping Cart Defined.	No Change
§ 43.90.	Under-Ring Defined.	No Change
§ 43.91.	Retail Theft; Defined.	No Change
§ 43.92.	Presumptions.	No Change
§ 43.93.	Detention.	No Change
§ 43.94.	Affirmative Defense.	No Change
§ 43.94.1.	Severability.	No Change
§ 43.95.	Unlawful Use of Theft Detection Shielding <i>or</i> Deactivation Devices.	No Change
§ 43.96.	Purpose.	No Change
§ 43.97.	Short Title.	No Change
§ 43.98.	Definitions.	No Change
§ 43.99.	Penalties.	No Change
Chapter 46	Forgery, Fraudulent Practices & Telephone Records	
§ 46.10.	Forgery; Defined & Punished.	No Change
§ 46.15.	Criminal Simulation; Defined & Punished.	No Change
§ 46.20.	Tampering with Recordable Documents; Defined & Punished.	No Change
§ 46.25.	Tampering with Records to Deceive or Conceal; Defined & Punished.	No Change
§ 46.30.	Issuance of Dishonored Checks.	Amend
§ 46.35.	Fraudulent Use of Credit Cards; Defined & Punished.	Amend
§ 46.40.	Deceptive Business Practices; Defined & Punished.	No Change
§ 46.45.	Bribery for Violation of Duty; Defined & Punished.	No Change
§ 46.50.	Rigging of Public Exhibitions; Defined; Failure to Report; Soliciting Punishment.	Repeal
§ 46.55.	Defrauding Creditors; Defined & Punished.	No Change
§ 46.60.	Fraud in Insolvency; Defined & Punished.	No Change
§ 46.65.	Receiving Deposits in Failing Bank; Defined & Punished.	No Change
§ 46.70.	Misapplication of Entrusted Funds; Defined & Punished.	No Change
§ 46.75.	Procuring Execution of Financially Significant Instruments by Fraud, Defined & Punished.	No Change
§ 46.80.	Impersonation; Identity Theft; Defined & Punished.	Amend
§ 46.90.	Definitions.	Repeal - Tabled
§ 46.91.	Prohibition on Use of Telephone Records.	Repeal - Tabled
§ 46.92.	Penalties:	Repeal - Tabled
§ 46.93.	Additional Penalties.	Repeal - Tabled
§ 46.94.	Exceptions.	Repeal - Tabled
§ 46.100.	Title.	No Change

ATTACHMENT 3 – TITLE 9 SECTION STATUS

CHAPTER AND SECTION	TITLE	STATUS
§ 46.101.	Definitions.	No Change
§ 46.102.	Mortgage Fraud.	Amend
§ 46.103.	Classification of Offense.	Amend
§ 46.104.	Mortgage Fraud Prosecutor and Investigators.	Repeal
§ 46.401.	Legislative Findings and Intent.	No Change
§ 46.402.	Definitions.	No Change
§ 46.403.	Phishing and Pharming.	No Change
§ 46.404.	Immunity for Disabling Phishing and Pharming Sites.	No Change
§ 46.405.	Violations.	No Change
§ 46.406.	Applicability.	No Change
§ 46.407.	Severability.	No Change
§ 46.408.	Effective Date.	No Change
§ 46.501.	Legislative Intent.	No Change
§ 46.502.	Definitions.	No Change
§ 46.503.	Violations.	No Change
§ 46.504.	Penalties.	Amend
§ 46.505.	Forfeiture.	No Change
§ 46.506.	Civil Action by Attorney General.	No Change
§ 46.507.	Lawfulness of Electronic Mail Service Provider Policies.	No Change
§ 46.508.	Severability.	No Change
§ 46.601.	Title.	No Change
§ 46.602.	Legislative Intent.	No Change
§ 46.603.	Definitions.	No Change
§ 46.604.	Prohibitions, Use of Software.	No Change
§ 46.605.	Other Prohibitions.	No Change
§ 46.606.	Exceptions.	No Change
§ 46.607.	Remedies.	No Change
§ 46.608.	Good Samaritan.	No Change
Chapter 47	Trademark Counterfeiting Act	
§ 47.10.	Definitions.	No Change
§ 47.20.	Counterfeiting of Registered Trademarks.	No Change
§ 47.30.	Trafficking of Counterfeited Goods.	No Change
§ 47.40.	Aiding and Abetting the Trafficking of Counterfeit Goods.	No Change
§ 47.50.	Defenses, Affirmative Defenses, and Limitations on Remedies.	No Change
§ 47.60.	Enforcement.	No Change
§ 47.70.	Restitution.	No Change
§ 47.80.	Protection for Landlords.	No Change
Chapter 48	Notification of Breaches of Personal Information	Tabled
Chapter 70	Miscellaneous Crimes	
§ 70.10.	Title.	No Change
§ 70.15.	Definitions.	Amend
§ 70.20.	Animal Neglect.	Amend
§ 70.25.	Animal Abuse.	Amend
§ 70.30.	Aggravated Animal Abuse.	No Change
§ 70.35.	Animal Fighting.	Amend
§ 70.40.	Sexual Assault of an Animal.	No Change
§ 70.45.	Bodily Alterations, Disablements, or Removals.	No Change
§ 70.50.	Animal Abandonment.	Amend
§ 70.55.	Failure of a Motorist to Render Aid to an Injured Animal.	Repeal
§ 70.60.	Leaving Animals Unattended in Motor Vehicles; Penalty; Authority of Officers.	Amend
§ 70.65.	Defenses; Exceptions.	Amend
§ 70.70.	Euthanasia Procedures.	No Change
§ 70.75.	Pre-Trial Provisions.	No Change
§ 70.80.	Sentencing Provisions.	Amend
§ 70.85.	Civil Right of Action for the Wrongful Injury or Death of an Animal.	No Change

ATTACHMENT 3 – TITLE 9 SECTION STATUS

CHAPTER AND SECTION	TITLE	STATUS
§ 70.210.	Declaration of Policy.	No Change
§ 70.220.	Definitions.	No Change
§ 70.230.	Unlawful Practices.	No Change
§ 70.240.	Exemptions.	No Change
§ 70.250.	Procedure.	No Change
§ 70.260.	Other Remedies.	No Change
§ 70.270.	Penalties.	No Change
§ 70.310.	Title.	No Change
§ 70.320.	Intoxication of Persons Under the Age of Twenty-One.	Amend
§ 70.330.	Possession of Cannabis by Persons Under Twenty-Years of Age.	Amend
§ 70.410	Tattoos, Brands, Scarifications and Piercings; Minors; Violation; Classification; Anesthesia; Defense; Definition.	No Change
§ 70.420.	Jet Ski Operation, Tumon Bay.	Amend
§ 70.430.	Unlawful Use of Telephone; Defined & Punished.	Repeal
§ 70.440.	Revealing Expunged Record Prohibited.	
§ 70.450.	Blacklisting Employees.	Repeal
Chapter 71	The Guam Gun-Free School Zone Act of 2005	
§ 71.10.	Title.	No Change
§ 71.20.	Definitions.	Amend
§ 71.30.	Person Not Allowed to Possess Firearms.	Amend
§ 71.40.	Prohibition on Discharge of Firearm.	Amend
§ 71.50.	Firearms Prohibited on University or College Property.	Amend
§ 71.60.	Punishment.	Amend
§ 71.61.	Information for Sentencing.	Amend
§ 71.70.	What Constitutes a Loaded Firearm.	Repeal
§ 71.80.	Notice.	Amend
§ 71.81.	Not Applicable to Peace Officers and Military.	Amend
§ 71.82.	Not Applicable to Security Guards.	Amend
§ 71.83.	Not Applicable to Existing Shooting Ranges.	Amend
§ 71.90.	Severability.	No Change
Chapter 80	Disposition of Offenders	Tabled
Chapter 81	Reduction of Sentences	Tabled
Chapter 82	Loss and Restoration of Rights Incident to Conviction or Imprisonment	
§ 82.10.	Basis for Legal Disqualification Disability.	No Change
§ 82.15.	Forfeiture of Office by Public Official.	No Change
§ 82.20.	Jury or Voting Disqualification for Duration of Sentence Only.	Amend
§ 82.25.	Discretionary Lifting of Disqualifications by Parole Board.	Amend
Chapter 83	Youth Correction Act	Not Presented
Chapter 84	Rehabilitative and Developmental Program	
§ 84.10.	Establishment of a Rehabilitative and Developmental Program for Department of Corrections Inmates.	No Change
§ 84.15.	Inmate Compensation and Distribution of Income Received.	Amend
§ 84.20.	Authorization to Charge for Work Products of the Program.	Amend
§ 84.25.	Victims Compensation Account Payment.	No Change
§ 84.30.	Applicability of Chapter to Other Programs.	No Change
§ 84.35.	Existing Programs Consolidated.	No Change
§ 84.49.	Certain Laws not Superseded.	No Change
Chapter 85	Territorial Parole Board	Tabled
Chapter 86	Compensation for Damages From Criminal Activities	Referred for Removal
Chapter 87	Victim Notification Repealed	Referred for Removal
Chapter 88	Criminal Justice Substance Abuse Act	Tabled
Chapter 89	Crimes Against Minors and Sex Offender Registry	Tabled
Chapter 90	Corrections	
§ 90.10.	Definitions.	Amend
§ 90.15.	General Duties of Department of Corrections.	Amend
§ 90.16.	Minimum Qualifications for Department of Corrections Officers.	Amend

ATTACHMENT 3 – TITLE 9 SECTION STATUS

CHAPTER AND SECTION	TITLE	STATUS
§ 90.16.1.	Annual Corrections Officer Recruits Training Cycle.	Amend
§ 90.20.	Corrections Advisory Council Established.	Amend
§ 90.25.	Director to Establish Prisons.	Amend
§ 90.27.	Prison May Serve as Overflow Lock-Up.	Amend
§ 90.30.	Rules, Regulations & Disciplinary Rules Authorized.	Amend
§ 90.35.	Director to Control Organization of DOC; Appoint Staff.	Amend
§ 90.40.	General Duties of Director of Corrections.	Amend
§ 90.41.	Inmate Commissary.	Amend
§ 90.42.	Operation of Inmate Commissary.	Amend
§ 90.43	Corrections Commissary Fund.	Amend
§ 90.44.	Inmate Phone Access Act of 2021.	Amend
§ 90.45.	Authorization to Transfer Prisoners to Federal Correctional Institutions.	No Change
§ 90.46.	Emergency Transfers of Inmates.	No Change
§ 90.47.	Disciplinary Transfer of Inmates.	No Change
§ 90.47.01	Same: Disciplinary Transfer.	No Change
§ 90.47.02	Same: Non-disciplinary Transfer.	No Change
§ 90.47.03	Same: Procedures for Transfers.	Amend
§ 90.47.04	Same: Basis of Determination	Repeal
§ 90.47.05	Same: Appeal from Determination.	Repeal
§ 90.48.	Nursing Mothers-Accommodations.	Amend
§ 90.49.	Corrections Revolving Fund.	Amend
§ 90.50.	Purpose of Article.	No Change
§ 90.51.	Compliance to §§ 90.46-90.48.	Amend
§ 90.52.	Compact Stated.	No Change
§ 90.54.	Director, Department of Corrections May Commit Prisoner Outside of Guam Pursuant to Terms of Compact.	No Change
§ 90.56.	All Agencies of Government of Guam Shall Enforce Compact.	No Change
§ 90.58.	Director, Department of Corrections May Hold Hearings as Required by Compact.	No Change
§ 90.60.	Governor May Contract to Implement Compact.	No Change
§ 90.62.	Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.	No Change
§ 90.64.	Severability.	Amend
§ 90.66.	Effective Date.	Amend
§ 90.80.	Purpose of Article: Title.	Repeal
§ 90.82.	Governor to Execute Compact: Compact Stated.	Repeal
§ 90.84.	Chief Judge of Superior Court to be Compact Administrator: Duties.	Repeal
§ 90.90.	Prison Industries, Established.	Amend
§ 90.91.	Prison Industries Revolving Fund.	Amend
§ 90.100.	[Untitled Section].	No Change
§ 90106	Correctional Medical Facilities	Add New
§ 90.201.	Creation.	No Change
§ 90.202.	Functions and Duties.	No Change
§ 90.203.	Recruitment.	No Change
§ 90.204.	Training, Equipping, and Maintenance of Records.	No Change
§ 90.205.	Reservist: Authority.	No Change
§ 90.206.	Same: Allowance.	No Change
§ 90.207.	Authorization for Full-Time CCRP Officers.	No Change
§ 90.208.	Same: Eligibility and Oath.	No Change
§ 90.209.	Rules and Regulations: Recommendations.	No Change
§ 90.301.	Legislative Findings and Policy.	No Change
§ 90.302.	Definitions.	No Change
§ 90.303.	Authorization to Enter into Long-Term Leases.	No Change
§ 90.304.	Identification of Projects and Procurement.	No Change
§ 90.305.	Responsibility of Contractor/Developer.	No Change

ATTACHMENT 3 – TITLE 9 SECTION STATUS

CHAPTER AND SECTION	TITLE	STATUS
§ 90.306.	Contractual Safeguards.	No Change
§ 90.307.	Assignments.	No Change
§ 90.308.	Pledge or Reservation of Revenues.	No Change
§ 90.309.	Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.	No Change
§ 90.310.	Prison IT, Building, and Security Management System.	No Change
§ 90.311.	Utilities and Routine Maintenance and Repair.	No Change
§ 90.312.	Maintenance Fund.	No Change
§ 90.313.	Rules and Regulations.	No Change
§ 903140 TOC.	Financial Plan Required.	No Change
§ 91.01.	Title.	No Change
§ 91.02.	Legislative Findings and Purpose.	No Change
§ 91.03.	Definitions.	No Change
§ 91.04.	Requirements and Responsibilities.	No Change
§ 91.05.	Criminal Penalties.	No Change
§ 91.06.	Civil and Administrative Action.	No Change
Chapter 93	Criminal Sexual Conduct Assessment and Rehabilitation Act	
§ 93.10.	Short Title.	No Change
§ 93.11.	Legislative Declaration.	No Change
§ 93.20.	Criminal Sexual Conduct Assessment: Standardized Procedure.	No Change
§ 93.30.	Assessment Required for Convicted Felons and Criminal Sexual Conduct Offenders.	No Change
§ 93.35.	Sentencing of Felons: Parole of Felons: Treatment and Testing Based Upon Assessment Required.	No Change
§ 93.40.	Development of Testing Programs.	No Change
§ 93.50.	Report to the Legislature.	No Change

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CHAPTER 1
PRELIMINARY PROVISIONS: DEFINITIONS

ARTICLE 1
PRELIMINARY PROVISIONS; CONSTRUCTION

§ 1.10. Short Title.

This ~~Code~~ Title 9 of the Guam Code Annotated shall be known as the Guam Criminal and Correctional Code.

CLRC COMMENT: Non-substantive clarification and for consistency with the first section of Title 8 GCA.

~~§ 1.12. Severability.~~

~~If any provisions 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.~~

CLRC COMMENT: Repeal and reenact as a new § 1.12 (Rules of Construction) with severability included as subsection (g).

§ 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 future, 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 provisions 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.

CLRC COMMENT: Reenacted § 1.12 consolidating 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), § 1.48 (Shall and May).

§ 1.14. Purpose for Defining Offenses-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 inexcusably inflicts 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;

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(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 protections;

(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;

(9) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and

(10) to impose sentences no more severe than necessary to achieve the societal purposes for which they are authorized.

(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.

CLRC COMMENT: Non-substantive clarification of title from source MPC § 1.02. Added subsection (b)(8) is from New Jersey and promotes restitution to victims. Added subsection (b)(9) is from the United States Code and promotes educational, vocational and medical care of inmates. Added subsection (b)(10) safeguards against disproportionate punishment.

§ 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;

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(2) conduct occurring outside the Territory is sufficient under the law of ~~this Territory~~ Guam to constitute an attempt to commit an offense within ~~the Territory~~ Guam;

(3) conduct occurring outside ~~the Territory~~ Guam is sufficient under the law of ~~this Territory~~ Guam to constitute a conspiracy to commit or offense within ~~the Territory~~ Guam and an overt act in furtherance of such conspiracy occurs within ~~the Territory~~ Guam;

(4) conduct occurring within ~~the 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 ~~the Territory~~ Guam; or

(6) the offense is based on a statute of ~~this Territory~~ Guam which expressly prohibits conduct outside ~~the 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.

(b) ~~Paragraph (1) 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 (1) 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 ~~the Territory~~ Guam which would not constitute an offense if the result had occurred there, unless the person intentionally or knowingly caused the result within ~~the 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 (1) of S-subsection (a)(1)~~ and if the body of a homicide victim is found within ~~the Territory~~ Guam, it is presumed that such result occurred within ~~the Territory~~ Guam.

(e) ~~the Territory~~ Guam includes the land and water and the air space above such land and water with respect to which ~~the 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 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 ~~the Territory~~ Guam’s interest will be adequately served by a prosecution in the other jurisdiction.

CLRC COMMENT: Amendments for consistency with 1 GCA § 420. Other amendments are for clarification of citations.

§ 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.

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(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.

CLRC COMMENT: Amendments for consistency with 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.

CLRC COMMENT: Amendments for consistency with 1 GCA § 420.

§ 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.

CLRC COMMENT: Amendment for consistency with 1 GCA § 420.

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

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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 8 GCA § 105.58 ~~of the Criminal Procedure Code~~;
- (b) one offense consists only of a conspiracy or other form of preparation to commit the other,
- (c) inconsistent findings of fact are required to establish the commission of the offenses;
- (d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or
- (e) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

CLRC COMMENT: Non-substantive citation clarification.

§ 1.24. Double Jeopardy. Same Offense.

A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

- (a) The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.
- (b) The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the 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.
- (d) The former prosecution was improperly terminated. Except as provided in this Subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of fact. Termination under any of the following circumstances is not improper:
 - (1) the defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination;
 - (2) the trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed; or
 - (3) the trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity.

CLRC COMMENT: Non-substantive typographical correction.

§ 1.26. Double Jeopardy. Different Offense.

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A prosecution of a defendant for a violation of a different provision of the statutes or based on different facts than a former prosecution is barred by such former prosecution under the following circumstances:

(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 § 65.30 of the Criminal Procedure Code~~ § GCA § 65.30(b) unless the court ordered a separate trial of the charge of such offense; or

(3) the same conduct, unless (A) 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 (B) the second offense was not consummated when the former trial began.

(b) The former prosecution was terminated, after the complaint 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 second offense.

(c) The former prosecution was improperly terminated, as improper termination is defined in § 1.24, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

CLRC COMMENT: Non-substantive citation clarification.

§ 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

~~(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~~

(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

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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.

CLRC COMMENT: Amendment for consistency with 1 GCA § 420. Amendment to subsection (a) to return the format of the paragraph to the format provided in the source MPC and NJ statutes with no substantive 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; or

(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 reprosecution 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.

CLRC COMMENT: Non-substantive grammatical correction and citation clarification.

~~§ 1.34. Rules of Construction.~~

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

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~§ 1.36. Headings.~~

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

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~§ 1.38. 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.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~§ 1.42. Tenses.~~

~~The present tense includes the past and future tenses; and the future, the present.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~§ 1.44. Gender.~~

~~The masculine gender includes the feminine and neuter.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12

~~§ 1.46. Number.~~

~~The singular number includes the plural; and the plural, the singular.~~

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CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~§ 1.48. Shall and May.~~

~~Shall is mandatory and may is permissive.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

**ARTICLE 2
DEFINITIONS**

§ 1.60. General Definitions Applicable to Entire Title.

Unless otherwise expressly stated:

~~(a) Chapter means a chapter of this Title.~~

~~(b) Article means an article of the chapter in which that term occurs.~~

~~(c) Section means a section of this Code.~~

~~(d) Subsection means a subsection of the section in which that term occurs.~~

~~(e) Paragraph means a paragraph of the subsection in which that term occurs.~~

~~(f) Person means any natural person, partnership, firm, association, corporation or other legal entity.~~

CLRC COMMENT: Repeal unnecessary definitions.

~~§ 1.80. Territory.~~

~~As used in this Code, Territory means the territory of Guam.~~

CLRC COMMENT: Amendment for consistency with 1 GCA § 420.

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CHAPTER 4
GENERAL PRINCIPLES OF LIABILITY

§ 4.45. ~~Same~~ 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 purpose to dispense with any culpable mental state requirement.

CLRC COMMENT: Non-substantive amendment to section title.

§ 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.

CLRC COMMENT: Non-substantive amendment to section title.

§ 4.75. ~~Same~~ 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.

CLRC COMMENT: Non-substantive amendment to section title.

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**CHAPTER 7
EXEMPTIONS AND DEFENSES**

**ARTICLE 1
EXEMPTIONS**

§ 7.10. Exemption from Criminal Liability Due to ~~Juvenile~~ Minor Status.

No person may be tried for or convicted of an offense if:

(a) his age at the time he is charged with an offense places him within the exclusive jurisdiction of the Family Division of the Superior Court;

(b) he was made the subject of a petition to commence proceedings in the ~~juvenile court~~ Family Court because of having committed the offense and the ~~juvenile court~~ Family Court has not made an order that he be prosecuted under general law; or

(c) he was certified to the ~~juvenile court~~ Family Court and the ~~juvenile court~~ Family Court ~~22~~ has not made an order directing that he be prosecuted under general law.

CLRC COMMENT: “Juvenile” in the title changed to “minor,” which is the term defined and used in the Family Court Act (19 GCA § 5102). “Juvenile Court” changed to “Family Court” per 19 GCA Chapter 5 (The Family Court Act), which replaced “Juvenile Court” in the 1970 Code of Civil Procedure Title V, Chapter I.

**ARTICLE 2
MENTAL RESPONSIBILITY**

§ 7.16. Defense: Mental Disease or Defect.

A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental illness, disease or defect, he lacked substantial capacity to know or understand what he was doing, or to know or understand that his conduct was wrongful, or to control his actions.

§ 7.19. Same Mental Disease or Defect: Admissibility of Evidence Showing.

Evidence that the defendant suffered from mental illness, disease or defect is admissible whenever it is relevant to prove the defendant’s state of mind.

CLRC COMMENT: Non-substantive amendment to section title.

§ 7.22. Same Mental Disease or Defect: Procedure for Assertion of.

(a) Mental illness, disease or defect, precluding responsibility, is an affirmative defense which the defendant must prove by a preponderance of the evidence.

(b) The defendant may not introduce evidence that he is not criminally responsible, as defined in § 7.16, unless he has entered a plea of not guilty by reason of mental illness, disease or defect.

(c) The defendant may not, except upon good cause shown, introduce in his case in chief expert testimony regarding his state of mind pursuant to § 7.19 unless he has given notice as provide in Subsection (d).

(d) The defendant shall plead not guilty by reason of mental illness, disease or defect, or shall give notice, in open court or in writing, that his mental condition will or may be in issue not later than ten days after his arraignment or at such later time as the court for good cause may allow. If such notice is given prior to or at the time of arraignment, the court shall defer the entry of a plea until the filing of the reports

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provided in § 7.25. Upon the giving of such notice or upon a plea of not guilty by reason of mental illness, disease or defect, the court shall order an examination to be conducted, as provided in § 7.25.

(e) Upon the filing of the reports provided in § 7.25, the defendant shall plead if he has not previously done so and the court shall set a date for trial. The trial shall not be held earlier than ten days after the filing of the reports.

CLRC COMMENT: Non-substantive amendment to section title.

§ 7.31. Acquittal: Verdict Must State Reason as Mental Illness, Disease or Defect.

Whenever a plea of not guilty by reason of mental illness, disease or defect is entered and the defendant is acquitted on the plea, the verdict or, if trial by jury has been waived, the finding of the court and the judgment shall so state.

CLRC COMMENT: Non-substantive amendment to section title.

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

(a) After entry of judgment of not guilty by reason of mental illness, disease or defect, the court shall, on the basis of the evidence given at the trial or at a separate hearing, make an order as follows:

(1) If the court finds that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others and is not in need of care, supervision or treatment, the court shall order him discharged from custody.

(2) If the court finds that the person is affected by mental illness, disease or defect and that he presents a substantial danger to himself or the person or property of others, but he can be controlled adequately and given proper care, supervision and treatment if he is released on supervision, the court shall order him released subject to such supervisory orders of the court, including supervision by the probation department, as are appropriate in the interest of justice and the welfare of the defendant. Conditions of release in such orders may be modified from time to time and supervision may be terminated by order of the court as provided in Subsection (b).

(3) If the court finds that the person presents a substantial risk of danger to himself or the person or property of others and that he is not a proper subject for release on supervision, the court shall order him committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment.

(b) At any time within five years of the original entry of the order of release on supervision made pursuant to ~~Paragraph (2) of~~ Subsection (a)(2), the court shall, upon motion of either the prosecution or such person, or upon its own motion, and after notice to the prosecution and such person, conduct a hearing to determine if, or to what extent, the person remains affected by mental illness, disease or defect. If the court determines that the person remains affected by mental illness, disease or defect, the court may release him on further supervision, as provided in Subsection (a), but for not longer than five years from the original entry of the order of release on supervision, or if the court determines that the person is affected by mental illness, disease or defect and presents a substantial danger to himself or to the person or property of others and cannot adequately be controlled if released on supervision, it may make an order committing the person to the Administrator of the Guam Memorial Hospital for custody, care and treatment. If the court determines that the person has recovered from his mental illness, disease or defect or, if affected by mental illness, disease or defect, no longer presents a substantial danger to himself or the person or property of others and no longer requires supervision, care or treatment, the court shall order him discharged from custody.

(c) If, after at least ninety days from the commitment of any person to the custody of the Administrator, the Administrator is of the opinion that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of

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others, the Administrator may apply to the court which committed the person for an order of discharge. The application shall be accompanied by a report setting forth the facts supporting the opinion of the Administrator. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.

(d) Any person who has been committed to the Administrator for custody, care and treatment, after the expiration of ninety days from the date of the order of commitment, may apply to the court by which he was committed for an order or discharge upon the grounds that he is no longer affected by mental illness, disease or defect, or if so affected, that he no longer presents a substantial danger to himself or the person or property of others. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.

(e) The court shall conduct a hearing upon any application for release or modification filed pursuant to Subsections (c) and (d). If the court finds that the person is no longer suffering from mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others, the court shall order him discharged from custody or from supervision. If the court finds that the person would not be a substantial danger to himself or to the person or property of others, and can be controlled adequately if he is released on supervision, the court shall order him released as provided in ~~Paragraph (2) of~~ Subsection (a)(2). If the court finds that the person has not recovered from his mental illness, disease or defect and cannot adequately be controlled if he is released on supervision, the court shall order him remanded for care and treatment.

In any hearing under this Subsection, the court may appoint one or more qualified psychiatrists or other qualified persons to examine the person and to submit reports to the court.

Reports filed with the court pursuant to such appointment shall include, but need not be limited to, an opinion as to the mental condition of the person and whether the person presents a substantial danger to himself or the person or property of others. To facilitate the expert's examination of the person, the court may order him placed in the temporary custody of any suitable facility.

(f) Any person who, to this Section, has been in the custody of the Administrator of the Guam Memorial Hospital or on release on supervision by the court for a period in excess of five years shall, in any event, be discharged if he does not present a substantial danger to the person of others.

CLRC COMMENT: Non-substantive amendments citation clarification. Tabled for further discussion.

§ 7.37. Mental Disease: a Bar to Proceeding or Sentence.

A person can neither be proceeded against nor sentenced after conviction while he is incompetent as defined in this Section:

(a) A defendant is incompetent to be proceeded against in a criminal action if, as a result of mental illness, disease or defect, he is unable

- (1) to understand the nature of the proceedings,
- (2) to assist and cooperate with his counsel,
- (3) to follow the evidence, or
- (4) to participate in his defense.

(b) A defendant is incompetent to be ~~sentenced~~ sentenced if, as a result of mental illness, disease or defect, he is unable

- (1) to understand the nature of the proceedings,
- (2) to understand the charge of which he has been convicted,

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- (3) to understand the nature and extent of the sentence imposed upon him or
- (4) to assist and cooperate with his counsel.

CLRC COMMENT: Non-substantive typographical correction.

§ 7.40. ~~Same~~ Mental Illness: Hearing to Determine.

(a) At any time before the commencement of the trial either party may make a motion for a hearing on the defendant's competency to be proceeded against, or the court on its own motion may order such a hearing. Thereupon, the court shall suspend all proceedings in the criminal prosecution and proceed as provided in § 7.25.

(b) At any time after the commencement of the trial, but before sentence, if it appears on the motion of either party or the court's own motion that there is reasonable cause to believe the defendant is incompetent to be proceeded against or sentenced, the court shall suspend all proceedings in the criminal prosecution and proceed as provided in § 7.25. The trial jury in the criminal prosecution may be discharged or retained at the discretion of the court until the defendant's competency is determined. The dismissal of the trial jury shall not be a bar to further prosecution.

(c) If the court for any reason once proceeds under § 7.25, then upon a second or subsequent notice or plea under § 7.22, or upon a second or subsequent motion under this Section, the court does not have to suspend the proceedings in the criminal prosecution and again proceed as provided in § 7.25, except upon a showing of good cause of changed conditions.

CLRC COMMENT: Non-substantive amendment to section title.

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

(a) If at least one psychiatrist concludes in his report filed pursuant to § 7.25 that the defendant may be incompetent to be proceeded against or to be sentenced, the court shall order the issue of his competency to be determined within ten days after the filing of the reports pursuant to § 7.25, unless the court, for good cause, orders the issue tried at a later date.

(b) Any hearing under this Section shall be by the court without a jury.

(c) If the court finds that the defendant is competent to be proceeded against or to be sentenced, the proceedings shall be resumed, or judgment be pronounced.

(d) If the court finds that the defendant is incompetent to be proceeded against or sentenced but that there is a substantial likelihood that he will regain his competency in the foreseeable future, the court shall order him committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment and shall require the Administrator to furnish the court with reports on the defendant's progress at least once every six months.

(e) Whenever, in the opinion of the Administrator or any officer designated in writing by him, the defendant regains his competency, the Administrator or such officer shall, in writing, certify that fact to the clerk of the court in which the proceedings are pending. Such certification, unless contested by the defendant or the people, shall be sufficient to authorize the court to find the defendant competent and to order the criminal prosecution to continue. If the certification is contested, a hearing before the court shall be held, after notice to the parties, and the party so contesting shall have the burden of proving by a preponderance of the evidence that the defendant remains incompetent.

Upon a finding of competency, the defendant may apply for his release pending trial in the manner provided by § GCA Chapter 40 (commencing with § 40.10) of the Criminal Procedure Code.

Upon written request by the court or either party, filed with the clerk of the court and served upon the superintendent of the institution in which the defendant is or was confined, the superintendent shall file

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with the clerk of the court the defendant's complete medical records, or such portion thereof as is designated in the request, or a certified copy thereof, while at said institution.

(f) If at any time the court determines that the defendant is incompetent and that there is no substantial likelihood that he will regain his competency in the foreseeable future, the court, upon its own motion, or upon motion of either party, and after reasonable notice to the other party and an opportunity to be heard, shall dismiss the pending indictment, information, or other criminal charges and order the defendant to be released or order the commencement of any available civil commitment proceedings.

(g) A finding or certificate that the defendant is mentally competent shall in no way prejudice the defendant in his defense on the plea under § 7.22 or in his defense under § 7.19. Such finding or certificate shall not be introduced in evidence on such issues or otherwise brought to the notice of the jury.

(h) The proceedings under this section shall be part of the criminal proceedings and included in the file of that case.

(i) Any period for which the defendant is committed pursuant to this Section shall be credited against any sentence which may later be imposed on him for the offense with which he charged.

CLRC COMMENT: Non-substantive amendment to section title and citation clarification.

§ 7.46. ~~Same~~ Mental Disease: Commitment as Exonerating Bail.

The commitment of the defendant pursuant to § 7.43 exonerates any depositor or surety who has provided security pursuant to 8 GCA Chapter 40 (commencing with § 40.10) ~~of the Criminal Procedure Code~~ and entitles such person to the return of any money or property he may have deposited.

CLRC COMMENT: Non-substantive amendment to section title and citation clarification.

§ 7.49. ~~Same~~ Mental Disease: Hearing and Procedure When Mental Disease or Defect Occurs After Sentence.

If at any time after the imposition of sentence and during the period a person is in the custody of the Director of Corrections or is subject to a sentence of probation or parole the Director of Correction has reasonable cause to believe that the person may as a result of mental illness, disease or defect, present a substantial danger to himself or the person or property of others, the directors shall so report to the Attorney General who shall file a motion for a judicial determination whether such person should be committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment. A similar motion may be and upon behalf of such person. The motion and the determination shall be made in the manner provided by § § 7.25, 7.40 and 7.43. If the court finds that the person as a result of mental illness, disease or defect, presents a substantial danger to himself or the person or property of others, the court shall order him to be committed to the custody of the Administrator of the Guam Memorial Hospital. Time spent in such detention shall be counted towards any sentence of confinement previously imposed. Either the Administrator or the person committed may apply for discharge in the manner provided by ~~Subsections (e) and (d)~~ of § 7.34(c) and (d). The court shall conduct a hearing on such application in the manner provided by ~~Subsection (e)~~ of § 7.34(e) and make such order releasing the person or returning him to probation, parole or custody of the Director of Corrections as may be required.

CLRC COMMENT: Non-substantive amendment to section title and citation clarification.

ARTICLE 3
DEFENSES

§ 7.55. ~~Specific Defenses Defined and Allowed~~ Ignorance Mistake.

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(a) A person’s ignorance or mistake as to a matter of fact or law is a defense if it negatives the culpable mental state required for the offense or establishes a mental state sufficient under the law to constitute a defense.

(b) A person’s belief that his conduct does not constitute a crime is a defense only if it is reasonable and,

(1) if the person’s mistaken belief is due to his ignorance of the existence of the law defining the crime, he exercised all the care which, in the circumstances, a law-abiding and prudent person would exercise to ascertain the law; or

(2) if the person’s mistaken belief is due to his misconception of the meaning or application of the law defining the crime to his conduct,

(A) he act in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in a statute, judicial decision, administrative order or grant of permission, or an official interpretation of the public officer or body charged by law with the responsibility for interpreting, administering or enforcing the law defining the crime; or

(B) he otherwise diligently pursues all means available to ascertain the meaning and application of the crime to his conduct and honestly and in good faith concludes his conduct is not a crime in circumstances in which a law-abiding and prudent person would also so conclude.

(c) The defendant must prove a defense arising under Subsection (b) by a preponderance of the evidence.

CLRC COMMENT: Non-substantive amendment to section title.

§ 7.64. ~~Other Defenses~~ Consent.

(a) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) When conduct is an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

(1) neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;

(2) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

(3) the conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury have been made aware of the risks involved prior to giving consent.

(c) Assent does not constitute consent, within the meaning of this Section, if:

(1) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifested or known to the defendant;

(2) it is given by a person who by reason of intoxication as defined in § 7.58, mental illness or defect, or youth, is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(3) it is induced by force, duress or deception.

CLRC COMMENT: Non-substantive amendment to section title and citation clarification.

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§ 7.67. Appropriateness of Prosecution De Minimis Infractions.

The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant’s conduct:

- (a) Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
- (b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
- (c) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense. The court shall not dismiss a prosecution under this Subsection without filing a written statement of its reasons.

CLRC COMMENT: Non-substantive amendment to section title and citation clarification.

§ 7.70. Entrapment as ~~Affirmative Defense.~~

(a) It is an affirmative defense that the defendant committed the offense in response to an entrapment, except as provided in Subsection (c).

(b) Entrapment occurs when a law enforcement agent, for the purpose of obtaining evidence of the commission of an offense, induces or encourages a person to engage in proscribed conduct, using such methods of inducement as to create a substantial risk that the offense would be committed by persons other than those who are ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(c) The defense afforded by this Section is unavailable when causing or threatening serious bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(d) As used in this Section, law enforcement agent includes personnel of federal and territorial law enforcement agencies, and any person cooperating with such an agency.

(e) The issue of entrapment shall be tried by the trier of fact.

CLRC COMMENT: Non-substantive amendment to section title and citation clarification.

§ 7.73. ~~Specific Defenses Defined and Allowed; Ignorance or Mistake; Intoxication; Duress, Compulsion; Consent; De Minimis Infractions; Entrapment; and Renunciation.~~

(a) In a prosecution for an attempt, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

(b) In a prosecution for criminal facilitation, it is an affirmative defense that, prior to the commission of the crime which he facilitated, the defendant made a reasonable effort to prevent the commission of such crime.

(c) In a prosecution for criminal solicitation, or for conspiracy, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the criminal or otherwise unlawful conduct contemplated by the conspiracy, as the case may be.

(d) A renunciation is not “voluntary and complete” within the meaning of this Section if it is motivated in whole or in part by:

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(1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime; or

(2) a decision to postpone the criminal conduct until another time or to substitute another victim or another but similar objective.

CLRC COMMENT: Non-substantive amendment to section title and citation clarification.

ARTICLE 4
JUSTIFICATION

CLRC COMMENT: Tabled.

ARTICLE 5
CASTLE DOCTRINE ACT

CLRC COMMENT: Tabled.

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CHAPTER 16
CRIMINAL HOMICIDE

§ 16.30. Aggravated Murder Defined.

(a) Criminal homicide constitutes aggravated murder when:

(1) it is committed intentionally with premeditation; or

(2) it is committed during the commission or attempt to commit any felony defined in Chapters 22, 25, 31, 34, 37, 40 or 58 of this Title; or

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

(4) Death of a minor child under the age of eighteen (18) is directly caused by a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title by a person who is not licensed to prescribe or dispense the substance; or

~~(4)~~ (5) it is committed upon the orders of another person. Such person giving the order is also guilty of aggravated murder.

(b) Aggravated murder is a felony of the first degree, but a person convicted of aggravated murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, further, that any person convicted of aggravated murder shall *not* be eligible for parole, work release, educational programs outside the confines of prison nor shall his sentence be suspended.

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 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. ~~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; 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.

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(b) Murder is a felony of the first degree, but a person convicted of murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, however, that any person convicted of murder shall be eligible for parole after serving fifteen (15) years as provided in § 80.72 of this Title and no part of said sentence shall be suspended; provided, further, that any person convicted of murder shall also *not* be eligible for work release or educational programs outside the confines of prison.

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 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.

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

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 16.60. Negligent Homicide Defined and Classified.

(a) Criminal homicide constitutes negligent homicide when it is committed by criminal negligence.

(b) Negligent homicide is a felony of the third degree.

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(subject to further revision)**

**CHAPTER 19
ASSAULT, RECKLESS ENDANGERING, TERRORIZING**

§ 19.60. Terrorizing; Defined & Punished.

(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.

CLRC COMMENT: Amendments for plain language.

**CHAPTER 32
FINANCIAL EXPLOITATION OF THE ELDERLY AND INDIVIDUALS WITH DISABILITIES**

CLRC COMMENT: Recommendation to repeal 9 GCA Chapter 32 (Financial Exploitation of Elderly and Individuals with Disabilities) in its entirety. Subcommittee Concerns: vulnerable victims sentencing enhancement and theft statute provide sufficient criminal prohibition; conflicting mens rea language throughout statute. This recommendation was tabled for further discussion.

**CHAPTER 34
ARSON, NEGLIGENT BURNING, CRIMINAL MISCHIEF**

§ 34.50. Criminal Mischief; Defined.

A person commits *criminal mischief* if:

~~(a) under circumstances not amounting to arson he damages or destroys property with the intention of defrauding an insurer; or~~

~~(b) he intentionally tampers with the property of another or forest land and thereby:~~

~~(1) recklessly endangers human life; or~~

~~(2) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or~~

~~(c) he intentionally damages the property of another or forest land; or~~

~~(d) he intentionally damages the motor vehicle of another.~~

CLRC COMMENT: Amendments for consistency with amendments to § 34.60.

§ 34.60. Criminal Mischief; Punished.

~~(a) A violation of subsections (b) or (d) of § 34.50 is a third degree felony.~~

~~(b) a~~ (a) A violation of subsection (a) of § 34.50 is a second degree felony if the defendant's conduct causes or is intended to cause pecuniary loss of Five Thousand Dollars (\$5,000.00) or more, a third degree felony if the defendant's conduct causes or is intended to cause pecuniary loss of Twenty-Five Hundred Dollars (\$2500.00) or more in excess of Five Hundred Dollars (\$500.00), a misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss of Five Hundred Dollars (\$500) or more in excess of Fifty Dollars (\$50.00), and a petty misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss of less than Five Hundred Dollars (\$500.00) in excess of Twenty four Dollars (\$24.00). Otherwise, criminal mischief is a violation.

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~~(c) Any adult convicted under subsection (c) of § 34.50, Title 9, Guam Code Annotated, is guilty of a misdemeanor punishable by imprisonment for not less than a mandatory forty eight (48) hours nor more than one year and a fine of two hundred fifty dollars (\$250.00) for the first offense, five hundred dollars (\$500.00) for the second offense and one thousand dollars (\$1000.00) for each subsequent offense.~~

In the case of a minor, the parents or the legal guardian shall be jointly and severally liable with the minor for the payment of all fines. Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents' or legal guardian's property to include the fine and court costs. Upon an application and finding of indigence, the court may decline to order fines against the minor or parents.

In addition to any punishment listed in subsection (e b), the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the defendant's offense in the amount or manner determined by the court. Furthermore, the person or if a minor, his or her parents, shall re-paint or refurbish the property so damaged, destroyed, removed, or defaced at such person's expense, under the supervision of the affected property owner or a court representative. The person shall also perform a minimum of one hundred eighty (180) hours but not to exceed three hundred sixty (360) hours of community service. Parents or legal guardians of any minor found to have violated this subsection shall also be responsible for providing supervision as well as paying for the fine if the minor is unable to do so.

~~(d b)~~ The court may order that any person punished under § 34.60(e) or § 34.70, Title 9, Guam Code Annotated this section, who is to be punished by imprisonment, shall be confined on days other than days of regular employment of the person, or on days other than school days if the defendant is a minor, as determined by the court.

CLRC COMMENT: Subsection (a) removed to clarify that punishment is based on grading values. Subsection (b) grading values of offenses increased after review of other jurisdictions' grading values for criminal mischief; and classification of "violation" as an offense removed. Subsection (c) language regarding mandatory minimums removed for uniformity with 9 GCA Chapter 80 (Disposition of Offenders).

§ 34.70. Graffiti Prohibited.

(a) Definitions. For the purpose of this section, the following terms apply:

(1) *Broad-tipped indelible marker* means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half inch or greater.

(2) *Bona fide evidence of majority* means a document issued by a federal, state, county or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

(3) *Owner* means any and all persons with legal and/or equitable title to real property in Guam as their names and addresses are shown upon the records of the Department of Revenue of Taxation or the Department of Land Management.

(4) *Supervising Adult* means an individual eighteen (18) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.

(5) *Used or intended to be used* includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.

(b) No person shall write, paint or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property owned, operated or maintained by a

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governmental entity or any agency or instrumentality thereof or by any person, firm or corporation unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained.

(c) Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad-tipped indelible marker with the intent to violate the provisions of this section.

(d) Possession of spray paint or broad-tipped indelible markers by minors on public property is prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container or spray paint can or broad-tipped indelible marker while on public property, highway, street, alley, or way except in the company of a supervising adult.

(e) Possession of spray paint or broad-tipped indelible markers by minors on private property is prohibited without consent of the owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession of the aerosol container or marker while on his or her property.

(f) Any person violating subsections (b), (c), (d) or (e) shall be punished by a fine of one thousand dollars (\$1,000.00) for the first offense, and two thousand five hundred dollars (\$2,500.00) for the second offense; and for each subsequent offense by a fine of five thousand dollars (\$5,000.00) or by imprisonment for a term *not to exceed* one hundred twenty (120) days or by both fine and imprisonment at the discretion of the court. In the case of a minor, the parents or legal guardian *shall* be responsible for payment of all fines. Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents or legal guardian's property to include the fine and court costs.

(g) In addition to any punishment ordered under subsection (f), the court shall order any person found in violation of subsections (b), (c), (d) or (e) to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court. Where the defendant is a minor, the parents or legal guardian shall be jointly and severally liable with the minor to make such restitution.

(h) In addition to any punishment listed in subsections (f) and restitution ordered under subsection (g), the court shall order any person found in violation of subsection (b), (c), (d) or (e) to perform monitored community service in the removal of graffiti of *not less than* two hundred fifty (250) hours and *not more than* five hundred (500) hours.

(i) In addition to any punishment listed in subsections (f), (g) and (h), any adult convicted for violating subsections (b), (c), (d) or (e) is guilty of a misdemeanor punishable by imprisonment ~~for not less than a mandatory sixty (60) days.~~

(j) All personal property, including, but not limited to, automobiles and bicycles, used or intended to be used in violating subsections (b), (c), (d) or (e) shall be forfeitable to Guam. In any forfeiture under this section, the Court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by the laws of Guam, the Organic Act, and the U.S. Constitution.

(k) No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen years (18) shall buy any aerosol container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.

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(l) Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers *shall*:

(1) Place a sign in clear public view at or near the display of such products stating:

“GRAFFITI IS A CRIME. ANY PERSON DEFACING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO ONE HUNDRED TWENTY (120) DAYS AND/OR A FINE UP TO FIVE THOUSAND DOLLARS (\$5,000.00).”

(2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers which states:

“IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF TWO HUNDRED FIFTY DOLLARS (\$250.00).”

(m) Violation of subsection (l) shall result in a civil penalty of two hundred fifty dollars (\$250.00) for a first offense and five hundred dollars (\$500.00) for subsequent offenses. When three (3) violations of subsection (l) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two (2) years. Violation of such injunction shall be punished by a fine of two hundred fifty hundred dollars (\$250.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers until payment of the fine, attorney’s fees and costs.

(n) In addition to any punishment ordered under Subsection (f), (g), (h), (i) and (j), the court *shall* immediately, upon conviction of an offender charged with the defacement of property, revoke the license or instruction permit of any driver in violation of this Section subject to a period of time described hereafter:

(1) after one (1) conviction, six (6) months;

(2) after a second or subsequent conviction, one (1) year for each conviction.

Any person who was convicted of any offense as described in this Act upon being eligible to receive a license or instruction permit, *shall not* be eligible to receive a license or instruction permit until the entire penalty period has elapsed.

Any prior convictions resulting in the revocation of a driver’s license or instruction permit *shall not* run concurrently with any existing or subsequent suspension, revocation, cancellation or denial which is provided for by law.

CLRC COMMENT: Amendments for clarification and for uniformity with 9 GCA Chapter 80 (Disposition of Offenders)

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

CHAPTER 37
BURGLARY AND HOME INVASION

ARTICLE 1
BURGLARY

§ 37.20. Burglary: Defined, Punishment Classified.

(a) A person is guilty of burglary if he enters or surreptitiously remains in any habitable property, building, or a separately secured or occupied portion thereof, or if he enters or surreptitiously remains in any School as defined in § 37.10(e) of this Chapter, with intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter, or a person is guilty of burglary if he enters or surreptitiously remains in any motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motor bus, motor truck, or vehicle, with intent to commit a crime therein. It is an affirmative defense to prosecution for burglary that the property, or building, or motor vehicle was abandoned or if the person reasonably believed that he or she owned, leased rented or was otherwise licensed to enter and remain in the habitable property, building, or a separately secured or occupied portion thereof, or the School, motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motorbus, motor truck, or vehicle.

(b) Burglary is a felony of the second degree. In the case of burglary as a felony of the second degree, the court shall impose a sentence of imprisonment of a minimum term of five (5) years, and may impose a maximum term of up to ten (10) years; the minimum term imposed shall not be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years, in addition to such term of imprisonment. Provided, however, that in the case of an offender not previously convicted of a felony, the court may sentence the offender to not more than five (5) years imprisonment as a third degree felony conviction, and the provisions of this Subsection prohibiting probation, suspension, parole or work release shall not be applicable to such offender.

(c) A second or subsequent offense of burglary to a school shall be a felony of the first degree. In the case of a second or subsequent conviction of burglary committed to a school as a felony of the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years, and may impose a maximum term of up to twenty (20) years; the minimum term imposed shall not be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment. However, if the offender is under the age of eighteen years the court shall have the discretion to suspend all or a portion of the minimum sentence, and may encourage the Balanced Approach Restorative Justice Process as provided in 19 GCA § 5134.

CLRC COMMENT: Amendment to § 37.20(a) to add an affirmative defense to burglary, and to § 37.20(c) to provide a reference to the Family Court Act within 9 GCA.

~~§ 37.40. The Breaking of Window Glass to Gain Access to Vehicles.~~

~~(a) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, is guilty of an additional offense as a third degree felony.~~

~~(b) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, in which the broken glass causes bodily injury to an innocent person is guilty of an additional offense as a second degree felony.~~

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

CLRC COMMENT: To remove a duplicative section already covered by burglary-specific statutory language for vehicles in § 37.20 and because there is no need for second or third degree felony levels for breaking window glass, repeal § 37.40.

CHAPTER 43
THEFT AND RELATED OFFENSES

ARTICLE 1
DEFINITIONS

§ 43.20. Theft; Defined & Punishment Classified.

(a) *Theft* constitutes a felony of the second degree if the amount involved is Five Thousand Dollars (\$5000.00) or more ~~exceeds One Thousand Five Hundred Dollars (\$1,500)~~ or if the property stolen is a bus, truck, automobile, aircraft, motorcycle, or motor boat, or in the case of theft by receiving stolen property, if the defendant is in the business of buying and selling stolen property. In the case of theft as a felony of the second degree, the court shall impose a sentence of imprisonment of a minimum term of five (5) years and may impose a maximum term of up to ten (10) years; the minimum term imposed shall not be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment provided, however, that in the case of an offender not previously convicted of a felony or of an offense constituting theft, the court may sentence the offender to not more than five (5) years imprisonment and the provisions of this subsection prohibiting probation, suspension, parole, or work release shall not be applicable to such offender.

(b) Theft constitutes a felony of the third degree if the amount involved is Twenty-Five Hundred Dollars (\$2500.00) or more ~~is less than One Thousand Five Hundred Dollars (\$1,500.00) but exceeds Five Hundred Dollars (\$500.00)~~ or if the property stolen is a firearm or motorized vehicle other than those set forth in Subsection (a) of this Section, or if the theft is through an unauthorized electrical connection

(c) Theft not constituting a felony of the second or third degree is a misdemeanor if the amount involved is Five Hundred Dollars (\$500.00) or more ~~exceeds Fifty Dollars (\$50)~~ or if the property stolen is a credit card or if the property was taken from the person or by extortion.

(d) Theft not constituting a felony of the second or third degree or a misdemeanor is a petty misdemeanor if the amount involved is less than Five Hundred Dollars (\$500.00).

(e) The amount involved in a theft shall be the fair market value of the property or services which the defendant stole or attempted to steal. Whether or not they have been issued or delivered, written instruments not having a readily ascertained market value shall be evaluated as follows:

(1) The value of an instrument constituting an evidence of a debt, such as a check, draft or promissory note, shall be the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(2) The value of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(f) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons or ~~amount~~ amounts involved in thefts by a servant, agent or employee from his principal or employer in any period of twelve (12) consecutive months, may be aggregated in determining the grade of the offense.

CLRC COMMENT: Grading values of offenses increased after review of other jurisdictions' grading values for theft.

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

§ 43.31. Crime Against the Community; Defined and Punishment.

(a) A person is guilty of a Crime Against the Community if that person knowingly takes, obtains or exercises unlawful control over government-owned, leased or borrowed property, or interferes with, obstructs, or takes action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety; or (2) doing so results in a deprivation of public services, such as utility services, the education of public or private school students, or any government service intended to benefit the public; or ~~(3) does so for a purpose other than the original purpose for which the property or services were to be provided.~~

(b) A person is guilty of a Crime Against the Community if that person knowingly destroys, defaces, alters, tampers with or damages government-owned, leased or borrowed property.

(c) A Crime Against the Community shall be alleged, in an information, complaint or indictment, as a Special Allegation which enhances punishment when the defendant is convicted of another offense. A Crime Against the Community shall be tried to a jury if the underlying crime is tried to a jury.

(d) A person convicted of a Crime Against the Community shall be sentenced to:

(1) Insofar as is practicable, make restitution to the victim of the crime, including the government of Guam or the Federal government;

(2) Insofar as is practicable, perform community service intended to raise community awareness that a crime against the public interest has been committed and is being punished, including, *but not limited to*, repair, painting and cleaning of items which are stolen, damaged or defaced; or

(3) Serve one (1) year of incarceration and pay an additional fine of up to Five Thousand Dollars (\$5,000.00) in addition to the sentence imposed for the underlying crime, if the underlying crime is a misdemeanor or felony. The court may suspend said term of incarceration and impose a term of probation instead.

CLRC COMMENT: Repeal § 43.31(a)(3) to remove vagueness and ambiguity. Tabled.

CHAPTER 46
FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

§ 46.30. Issuance of Dishonored Checks.

(a) Definitions. For the purpose of this section, the following terms have the meanings given them.

(1) *Check* means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(2) *Credit* means an arrangement or understanding with the drawee for the payment of a check.

(b) Acts constituting. Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check and may be sentenced as provided in subsection (b)(1). In addition, restitution may be ordered by the court.

(1) Penalties. A person who is convicted of issuing a dishonored check under subsection (b) is:

(A) guilty of a petty misdemeanor ~~punishable by imprisonment for not more than sixty (60) days or by payment of a fine of not more than \$500, or both~~, if the value of the dishonored check, or checks aggregated under paragraph (2), is not more than Five Hundred Dollars (\$500.00) ~~\$250~~; or

(B) guilty of a misdemeanor ~~punishable by imprisonment for not more than one (1) year, or by payment of a fine of not more than \$2,000, or both~~, if the value of the dishonored check, or

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(subject to further revision)

checks aggregated under paragraph (2), is equal to or more than Five Hundred Dollars (\$500) but less than Two-Thousand Five Hundred dollars (\$2,500.00) ~~\$250, but not more than \$1000;~~
or

(C) guilty of a felony of the third degree ~~punishable by imprisonment for not more than five (5) years, or by payment of a fine of not more than \$5,000, or both,~~ if the value of the dishonored check, or checks aggregated under paragraph (2), is equal to or more than \$2,500.00 but less than \$10,000.00. ~~or more is more than \$1,000.~~

(D) guilty of a felony of the second degree if the value of the dishonored check, or checks aggregated under paragraph (2), is \$10,000.00 or more.

(2) In a prosecution under this paragraph, the value of dishonored checks issued by the defendant in violation of this subsection within any six-month period may be aggregated and the defendant charged accordingly in applying this section.

(c) Proof of intent. Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

(1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

(2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection; or

(3) proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection.

Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within thirty (30) days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

(d) Proof of lack of funds or credit. If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

(e) Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

CLRC COMMENT: Grading values of offenses increased and second degree of offense created.

§ 46.35. Fraudulent Use of Credit Cards; Defined & Punished.

(a) A person commits an offense if he uses a credit card or the account number of a credit card account with the intent of obtaining property or services with knowledge that:

(1) the card or account number is stolen or forged;

(2) the card or account number has been revoked or cancelled; or

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(subject to further revision)

(3) for any other reason his use of the card is unauthorized.

(b) It is an affirmative defense to prosecution under Paragraph (3) of Subsection (a) if the defendant proves by a preponderance of the evidence that he had the ability and intended to meet all obligations to the issuer arising out of his use of the card.

(c) Credit card means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(d) An offense under this Section is:

1. A petty misdemeanor if the value of the property or services secured or sought to be secured by means of the credit card is equal to or less than Five Hundred Dollars (\$500.00);

2. A misdemeanor if the value of the property or services secured or sought to be secured by means of the credit card is greater than Five Hundred Dollars (\$500.00) and less than Two-Thousand Five Hundred dollars (\$2,500.00);

3. a~~A~~ felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card ~~exceeds \$500 otherwise it is a misdemeanor~~ is equal to or greater than Two Thousand Five Hundred Dollars (\$2,500.00) and less than Ten Thousand Dollars (\$10,000.00);

4. A felony of the second degree if the value of the property or services secured or sought to be secured by means of the credit card is equal to or greater than Ten Thousand Dollars (\$10,000.00).

CLRC COMMENT: Add offense levels and amend offense grading values.

~~§ 46.50. Rigging of Public Exhibitions; Defined; Failure to Report; Soliciting Punishment.~~

~~(a) A person commits a misdemeanor if, with intent to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:~~

~~(1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or~~

~~(2) tampers with any person, animal or thing.~~

~~(b) A person commits a misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under Subsection (a).~~

~~A person commits a petty misdemeanor if he fails to report, with reasonable promptness, a solicitation to accept any benefit or to do any tampering, the giving or doing of which would be criminal under Subsection (a).~~

CLRC COMMENT: Recommendation to repeal 9 GCA § 46.50, which is related to greyhound racing as indicated in the Compiler comment, and now inapplicable as greyhound racing no longer exists in Guam.

§ 46.80. Impersonation; Identity Theft; Defined & Punished.

(a) A person commits an offense when that person:

(1) impersonates another or assumes a false identity and does an act in such assumed character or false identity to obtain a benefit for oneself or another, or to injure or defraud another;

(2) pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit for oneself or for another, or to injure or defraud another;

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(subject to further revision)

(3) impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;

(4) possesses or obtains any personal identifying information pertaining to another person, without the authorization of that person, and uses or attempts to use that information, or assists another person in using the information, for any unlawful purpose, including to:

(A) fraudulently obtain, or attempt to obtain, money, credit, goods, services, anything of value, or medical information in the name of another person;

(B) injure or defraud, or attempt to injure or defraud, another person;

(C) avoid, or attempt to avoid, the payment of debt or other legal obligation; *or*

(D) avoid, or attempt to avoid, prosecution for a crime in the name of the other person without the consent of that person.

(b) As used in this Section, *personal identifying information* means the name, address, telephone number, driver's license or driver's license number, social security card or social security number, passport or passport number, official government of Guam or other state identification card or number, mother's maiden name, demand deposit account number, savings account number, credit card or credit card number, or a debit card or debit card number, or any name or number that may be used, alone or in conjunction with any other information, to assume the identity of a person. The list in this Subsection is *not* exhaustive.

(c) An offense under this Section is:

1. A petty misdemeanor if the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, if any, is equal to or less than Five Hundred Dollars (\$500.00).

2. A misdemeanor if the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, if any, is greater than Five Hundred Dollars (\$500.00) and less than Twenty-Five Hundred Dollars (\$2,500.00).

3. A felony of the third degree if the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, if any, is equal to or greater than Twenty-Five Hundred Dollars (\$2,500.00) and less than Ten Thousand Dollars (\$10,000.00).

4. a felony of the second degree if the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, if any, is ~~at least Five Thousand Dollars (\$5,000.00); otherwise, it is a felony of the third degree equal to or greater than Ten Thousand Dollars (\$10,000.00).~~

(d) A person found guilty of violating any provisions of this Section shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of such violation. Financial loss may include any costs incurred by such victim in correcting the credit history of such victim, or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.

(e) In any case in which a person obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of Subsection (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did *not* commit the crime.

CLRC COMMENT: Add offense levels and amend offense grading values.

ARTICLE 2
TELEPHONE RECORDS; OBTAINING, SELLING, OR

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

RECEIVING WITHOUT CONSENT

ARTICLE 3
MORTGAGE FRAUD

§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.

CLRC COMMENT: Mortgage fraud classified as a second degree felony.

§46.103. Classification of Offense.

(a) Notwithstanding any other administrative, civil, *or* criminal penalties, a person who violates §46.102 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.~~

~~(6) 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 of this Chapter, *except* as provided in Subsections (a)(4) and (5).~~

(b) Each residential *or* commercial property transaction offense under this part constitutes a separate violation.

CLRC COMMENT: Grading offenses removed except second degree felony consistent with § 46.102.

~~§46.104. Mortgage Fraud Prosecutor and Investigators.~~

~~(a) The Attorney General may employ:~~

~~(1) An attorney licensed to practice law who:~~

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(subject to further revision)

~~(A) has knowledge of the law related to mortgage fraud; and~~

~~(B) if possible, has a background or expertise in investigating and prosecuting mortgage fraud.~~

~~(2) At least two (2) investigators who have a background or expertise in investigating mortgage fraud.~~

~~(3) The attorney employed under Subsection (a) (1) has as that attorney’s primary responsibility the prosecution of mortgage fraud.~~

~~(4) Each person employed under Subsection (b) shall have as that person’s primary responsibility the investigation of mortgage fraud.~~

~~(5) clerks, interns, or other personnel to assist the attorney employed under Subsection (a) (1).~~

CLRC COMMENT: Repeal. The Attorney General has discretion and authority to hire prosecutors and investigators, without specific need for “mortgage fraud prosecutor and investigators”

ARTICLE 5
COMPUTER PROTECTION ACT

§ 46.504. Penalties.

(a) A person who violates § 46.503 (a), (b), (c), (d) or (e) is guilty of a third degree felony, ~~and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars (\$5,000), or both.~~

(b) A person who violates § 46.503 (a), (b), (c), (d) or (e) involving the transmission of more than two hundred fifty (250) commercial electronic mail messages during a twenty-four (24) hour period; two thousand five hundred (2,500) commercial electronic mail messages during any thirty (30)-day period; or twenty five thousand (25,000) commercial electronic mail messages during any one (1)- year period is guilty of a second degree felony, ~~and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars (\$10,000), or both.~~

(c) A person who violates § 46.503 (c) or (d) involving twenty (20) or more electronic mail accounts, or ten (10) or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from the accounts or using the domain names is guilty of a second degree felony, ~~and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars (\$10,000), or both.~~

(d) A person who violates § 46.503 (a), (b), (c), (d) or (e) that causes a loss of One Thousand Dollars (\$1,000) or more during any one (1)-year period is guilty of a third degree felony, ~~and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars (\$5,000), or both.~~

(e) A person who violates § 46.503 (a), (b), (c), (d) or (e) in concert with three (3) or more other persons as the leader or organizer of the action that constitutes the violation is guilty of a second degree felony, ~~and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars (\$10,000), or both.~~

(f) A person who violates § 46.503 (a), (b), (c), (d) or (e) in furtherance of a felony, or who has previously been convicted of an offense under the laws of Guam, another state, or under any federal law involving the transmission of multiple commercial electronic mail messages is guilty of a second degree felony, ~~and upon conviction is subject to imprisonment not to exceed ten (10) years or a fine not to exceed Twenty Five Thousand Dollars (\$25,000), or both.~~

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(subject to further revision)

(g) A person who violates § 46.503 (f) or (g) is guilty of a ~~misdemeanor felony, and upon conviction is subject to imprisonment not to exceed one (1) year or a fine not to exceed Five Thousand Dollars (\$1,000), or both.~~

CLRC COMMENT: Removal of duplicative language and for uniformity with 9 GCA Chapter 80 (Disposition of Offenders). Subsection (a) provides for a third degree felony base penalty without first offender exception. Subsections (b), (c), (e), and (f) provide for second degree felony base penalty. Subsection (d) provides for third degree felony base penalty. Subsection (g) imprisonment penalty for misdemeanor, but language stated offense is felony grade

CHAPTER 48
NOTIFICATION OF BREACHES OF PERSONAL INFORMATION

CLRC COMMENT: Tabled.

CHAPTER 70
MISCELLANEOUS CRIMES
ARTICLE 1
PROTECTING ANIMAL WELFARE AND SAFETY (PAWS) ACT (PUGUA’S LAW)

§ 70.15. Definitions.

(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.~~

(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.~~

CLRC COMMENT: Subsection (h) removal of restriction on who may authorize an officer. Subsection (j) removal of injuries difficult to prove. No other subsections amended.

§ 70.20. Animal Neglect (Violation).

(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 an offense punishable by a fine of not more than Five Hundred Dollars (\$500) per offense a violation.~~

(c) Each act or omission in violation of Subsection (a) of this Section shall constitute a separate ~~offense violation.~~

CLRC COMMENT: Animal neglect classified as a violation as opposed to animal abuse in § 70.30 which is a misdemeanor. Language on fines and restitution deleted as they are generally covered in 9 GCA Chapter 80 (Disposition of Offenders).

§ 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.

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(subject to further revision)

(c) Each act or omission in violation of Subsection (a) of this Section shall constitute a separate offense.

CLRC COMMENT: Mens rea of recklessly and criminal negligence removed. Purpose of § 70.30 is to punish intentional and knowing animal abuse compared to animal neglect in § 70.20 which is a violation.

§ 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.~~

(b) For the purposes of this Section, a person encourages an animal to fight, menace or injure another animal for the purpose of sport, amusement, or pecuniary gain, if the person:

(1) is knowingly present at or wagers on such an occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain;

(2) owns, trains, transports, possesses, has custody or control of, breeds, or equips an animal with the intent that such animal will be engaged in such an occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain;

(3) knowingly allows any such occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain to occur on any property owned or controlled by the person;

(4) knowingly allows any animal to be used for such an occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain to be kept, boarded, housed, or trained on, or transported in, any property owned or controlled by the person;

(5) knowingly advertises or uses any means of communication for the purpose of promoting such an occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain; or

(6) knowingly possesses, owns, buys, sells, transfers, or manufactures any animal used for fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain; or any device intended to train or enhance the animal's fighting, menacing or injuring ability for the purpose of sport, amusement, or pecuniary gain.

(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 80 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.

(e) Nothing in this Section shall constitute a prohibition or ban on the possession, lawful importation/exportation, breeding, or selling of any breed of dog.

(f) Veterinarians and/or physicians and/or health professionals are required to report suspected animal fighting incidents, excluding cockfighting as authorized by law, that come to their attention through the provision of medical services to an animal to the Guam Police Department within five (5) days of learning of animal fighting incidents. Failure to do so shall result in potential loss of licensure if deemed appropriate by the appropriate licensure agencies. Any veterinarians, physicians, or health professionals making a report under this Subsection shall be immune from any civil or criminal liability by reason of making the report, unless the report was made in bad faith.

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(subject to further revision)

CLRC COMMENT: Subsection (a) amended to address the federal ban on cockfighting. Subsection (d) language addressing imprisonment and fines removed, as these penalties are covered generally in 9 GCA Chapter 80 Article 3.

§ 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.

CLRC COMMENT: Subsection (b) language removed as fines are covered generally in 9 GCA Chapter 80 (Disposition of Offenders).

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

~~(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.~~

CLRC COMMENT: Repeal recommended. Enforceability of this section is questioned and it creates a potentially dangerous duty.

§ 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.

CLRC COMMENT: Unnecessary language removed from subsection (a)(2). No other subsections amended.

§ 70.65. Defenses; Exceptions.

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

(1) the proper shooting or taking of game in such manner and at such times as is allowed or provided by the laws of Guam;

~~(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;~~

CLRC COMMENT: Subsection (g)(2) removed to address the federal ban on cockfighting. Subsection (g)(3) amended to respect the cultures that consume these animals. No other subsections amended.

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(subject to further revision)

§ 70.80. Sentencing Provisions.

(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.

CLRC COMMENT: Subsection (b)(1) amended as the determination whether to order a mental examination for an offender under this Article should be at the court’s discretion. No other subsections amended.

ARTICLE 3
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.

(a) No person twenty-one (21) years or older shall knowingly give or otherwise make available any alcoholic beverage or cannabis to a person under the age of twenty-one (21) years. A person violates this Section who gives or otherwise makes available an alcoholic beverage or cannabis to a person under the age of twenty-one (21) with the knowledge that the person to whom the alcoholic beverage or cannabis is made available will violate this § 70.53.

(b) A person violates this Section who owns, occupies, or controls premises on which alcoholic beverages or cannabis are consumed by any person under twenty-one (21) years of age, and who knows of alcohol or cannabis consumption by persons under twenty-one (21) years of age on such premises, and who reasonably could have prohibited or prevented such alcohol or cannabis consumption.

(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; and~~

(2) in addition to the sentence referenced in Subsection (c)(1) the court *may* require the violator to make restitution for any damages to property or a person caused by a violation of this § 70.53, and *may* require participation in volunteer service to a community service agency.

(d) The prohibitions of this Section apply only to a person who is present and in control of the location at the time the consumption occurs. The prohibitions of this Section do not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.

(e) This Section *shall not* apply to any religious practice, observance, or ceremony.

(f) The violations of this Section and the resulting penalties prescribed herein, supra, are in addition to other violations of public law related to alcoholic beverages or cannabis.

CLRC COMMENT: Subsection (c)(1) amended to clarify the definition of the offense as a misdemeanor. Language removed as imprisonment and fines are covered generally in 9 GCA Chapter 80 Article 3.

§ 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 petty misdemeanor violation 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~~

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~~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.~~

CLRC COMMENT: Possession classified as a violation for consistency with the possession statute. Recommend moving § 70.330 to Chapter 67 which covers narcotics and controlled substances.

ARTICLE 4
MISCELLANEOUS CRIMINAL OFFENSES

§ 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.

CLRC COMMENT: Inconsistent language removed.

~~§ 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 Police, 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.~~

CLRC COMMENT: Repealed as archaic and unnecessary.

~~§ 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, conspires or contrives, 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~~

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(subject to further revision)

~~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.~~

~~(c) An employer who in good faith provides information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee is immune from civil liability for the disclosure or the consequences of providing the information. There is a presumption of good faith if either:~~

~~(1) The employer employs less than one hundred (100) employees and provides only the information authorized by this Subsection.~~

~~(2) The employer employs at least one hundred (100) employees and has a regular practice in Guam of providing information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee.~~

~~(d) The presumption of good faith under Subsection (c) of this Section is rebuttable by showing that the employer disclosed the information with actual malice or with intent to mislead. This Subsection and Subsection (c) of this Section do not alter any privileges that exist under common law. For the purposes of this Subsection, “actual malice” means knowledge that the information was false or was provided with reckless disregard of its truth or falsity.~~

~~(e) Communications concerning employees or prospective employees that are made by an employer or prospective employer, or by a labor organization, to a government body or agency and that are required by law or that are furnished pursuant to written rules or policies of the government body or agency are privileged.~~

~~(f) An employer, including the government of Guam and its agencies, a labor organization or an individual is not civilly liable for privileged communications made pursuant to Subsection (e) of this Section.~~

~~(g) In response to a request by another bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker it is not unlawful for a bank, a savings and loan association, a credit union, an escrow agent, a commercial mortgage banker, a mortgage banker or a mortgage broker to provide a written employment reference that advises of the applicant's involvement in any theft, embezzlement, misappropriation or other defalcation that has been reported to federal authorities pursuant to federal banking guidelines or reported to the department of financial institutions. In order for the immunity provided in Subsection (h) of this Section to apply, a copy of the written employment reference must be sent by the institution providing the reference to the last known address of the applicant in question.~~

~~(h) No bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker shall be civilly liable for providing an employment reference unless the information provided is false and the bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker providing the false information does so with knowledge and malice.~~

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~~(i) A court shall award court costs, attorney fees and other related expenses to any party that prevails in any civil proceeding in which a violation of this Section is alleged.~~

CLRC COMMENT: Repealed as an unnecessary criminal offense. Because subsections (c)-(i) regard civil liability, recommend reenactment of (c)-(i) as civil statutes.

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(subject to further revision)

CHAPTER 71
THE GUAM GUN-FREE SCHOOL ZONE ACT OF 2004

§ 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).~~

CLRC COMMENT: Subsection (c) is unnecessary as the term “Concealed Firearm” is not used in this chapter.

§ 71.30. ~~Person Not Allowed to Possess Firearms~~ Possession of Firearms in a School Zone.

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)~~ § 71.20(a) of this Chapter, shall be punished as specified in ~~Subdivision § 71.60.~~

CLRC 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)~~ § 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.

CLRC 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.~~

CLRC 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.

§ 71.60. Punishment.

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(subject to further revision)

Any person who ~~violates~~ is convicted of violating § 71.30, § 71.40, or § 71.50 of this Act shall be guilty of a felony of the third degree and ~~any person who is convicted of an offense pursuant to § 71.30, § 71.40, or § 71.50~~ shall be sentenced as follows:

(a) For a first offense, the Court shall impose a sentence of imprisonment of no more than three (3) years, a fine of not less than One Thousand Dollars (\$1,000.00), and mandatory community service of no less than one hundred and fifty (150) hours.

(b) In cases where the person has been convicted of felonies under any provision of this Chapter, the person shall be sentenced to a term of imprisonment which shall not be less than five (5) years and in addition, may be fined not more than Fifteen Thousand Dollars (\$15,000.00). The sentence, ~~if for a term of years,~~ shall include a special parole term of not less than one (1) year in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended, and probation shall not be granted. Sentence in these cases must also include mandatory community service of no less than one hundred fifty (150) hours unless the term of imprisonment is for life.

(c) The Court shall apply any minimum sentence, fine or community service specified in this Section, except in unusual cases where the interests of justice would best be served ~~by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment, fine or community service required in this Subdivision or~~ by granting probation or suspending the execution or imposition of sentence, fine or community service with conditions other than those set forth in this Section, in which case the Court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

CLRC COMMENT: Remove unnecessary verbiage.

§ 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.

CLRC 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.~~

CLRC 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, this § 71.70 is not necessary.

~~§ 71.80~~ 71.70. 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.~~

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(subject to further revision)

CLRC COMMENT: Recommend deletion of (b) as it is outdated.

§ ~~71.81~~ 71.80. 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 8, 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.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

§ ~~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.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

§ ~~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.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

§ 71.90. Severability.

If any provision of this Act or its application to any person or circumstances is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

CHAPTER 81
REDUCTION OF SENTENCES

§ ~~81.10~~ 80.23. Reduction of Sentence by Work Credit.

(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; provided, that the Director of Corrections:

(1) determines that the person meets the following eligibility requirements that he or she:

(A) has not been convicted of a second degree felony or higher ~~which is~~ including homicide, criminal sexual conduct, robbery or escape as set forth in Chapters 16, 25, 40, and 58 of this Title, respectively; and

(B) is physically able to do such work.

(b) The Director shall ~~provide~~ ensure supervision of the work detail.

(c) The person's sentence shall be reduced by one (1) day for each forty (40) hours of work done that involves cleaning up littered areas, parks, and beaches or other types of work details beneficial to the island of Guam. The person's sentence shall be reduced by two (2) days for each forty (40) hours of work done that involves educational or on-the-job training, or a combination of both.

(d) The Directors of Public Works and Parks and Recreation, and any non-profit organization authorized to participate in the Work Credit program, shall cooperate with the Director of Corrections in choosing sites for work.

(e) Inmates who were eligible to work in previous work detail programs shall only participate in work governed by this Section if they qualify.

(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.*

CLRC COMMENT: Chapter 81 consists of only one section. Recommend to move this section to Chapter 80 as amended and remove Chapter 81. Amendment to (a) was recommended by DOC Director Fred Bordallo to make it clear that work inside the Department of Corrections would be included for Work Credit. Amendments to (a)(1)(A) and (b) are non-substantive clarifications. Subsection (f) was tabled for further discussion by the Subcommittee on Drugs & Other Criminal Offenses.

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

CHAPTER 82
LOSS AND RESTORATION OF RIGHTS INCIDENT
TO CONVICTION OR IMPRISONMENT

§ 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

(b) from serving as a juror until he has satisfied his sentence.

CLRC COMMENT: Amendment to (a) clarifies that the prohibition from voting applies to persons actually imprisoned

§ 82.25. Discretionary Lifting of Disqualifications by Parole Board.

(a) The board of parole may remove any disability or disqualification imposed by law on a person found guilty of crime, if such person has completed the maximum term of his sentence or completed a period of suspension or probation as provided by § 80.64, or has been discharged from parole pursuant to § 80.83, on petition of such person under the terms of this Section.

(b) A person seeking removal of disabilities or disqualifications under this Section shall petition the board therefor. The board shall thereupon cause a copy of such petition to be sent to the Attorney General, Guam Police Department, and the sentencing judge. Within six weeks of the receipt of the copy of such petition, the appropriate officials may make written recommendations or comments regarding the petition to the board, but failure to make such response shall not stop the procedure in the case. The board shall also cause to be brought before it, all available presentence and probation reports and records of all department of corrections and of the board of parole regarding the petitioner. The board in its discretion may hold a hearing on such petition at which it may interview the petitioner and consider such matters as it deems appropriate.

(c) Within six months, the board shall determine whether to exercise its discretion to remove any disqualification or disability on the petitioner, and if it does so act, shall issue a certificate of such removal to the petitioner.

(d) The removal of disqualifications or disabilities shall not constitute a pardon nor preclude any person from taking into consideration the fact that the petitioner has been found guilty of a crime where such fact may have previously lawfully ~~be~~ been considered.

CLRC COMMENT: Non-substantive typographical correction.

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

CHAPTER 84
REHABILITATIVE AND DEVELOPMENTAL PROGRAM

§ 84.15. Inmate Compensation and Distribution of Income Received.

(a) Inmates shall be paid by the Department at rates determined by the Director by regulation.

(b) The inmate's wages derived from the Program, ~~before being disbursed to the inmate,~~ shall be divided and disbursed as follows:

(1) Ten percent (10%) to be deposited in the inmate's name for personal use;

(2) Forty five percent (45%) to be deposited in the ~~client's~~ inmate's name to pay any legal obligations such inmate may have incurred, such as but not limited to spouse and child support.

(3) Forty-five percent (45%) to be used, first, to restore to the victim(s) of the inmate's crime(s) any monies that were lost as a result of such crime(s), with the balance, if any, to be transferred to the Criminal Injuries Compensation Fund (the Fund) for compensation to the victims of crime.

(c) Profits, if any, derived from the Program shall be deposited in the Fund.

CLRC COMMENT: Recommendation to amend 9 GCA § 84.15(b) to provide clarification and remove unnecessary verbiage.

§ 84.20. Authorization to Charge for Work Products of the Program.

(a) Every effort shall be made by the Director to make the Program self-supporting from the funds generated therefrom. The Director shall submit to the Governor and to the Speaker of the Legislature a full report on the status of the Program ~~within ninety (90) days after the enactment of this Chapter and annually thereafter,~~ when the Department's budget request is submitted to the Governor.

(b) The Director is authorized and directed to establish fees and charges for the work products or products generated by the Program and to use such funds generated, after paying the inmates as provided in ~~§ 84.02~~ 84.15, to support the Program by way of supplies, equipment and administrative expenses.

(c) When services, produce, or products generated by the Program are used by the Department for its own in-house purposes, the Director is authorized to pay the inmates from appropriations to the Department for their labor in creating such services, produce or products.

CLRC COMMENT: Recommendation to amend 9 GCA § 84.20 to update it and correct a misnumbered reference.

**ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)**

**CHAPTER 85
GUAM PAROLE BOARD**

§ 85.72. Paroled Prisoner to Receive Clothes, Transportation and Maximum of \$25.

~~When a~~ A prisoner is placed on parole, ~~he shall receive from Guam~~ shall be provided civilian clothing and transportation to the place in Guam in which ~~he~~ the prisoner is to reside. At the discretion of the Board, the prisoner may be advanced such sum for his temporary maintenance as said Board may allow, not to exceed Twenty-Five Dollars (\$25.00), from a fund which shall be provided for use of the Board for this purpose.

CLRC COMMENT: Recommendation to amend 9 GCA § 85.72 to provide clarification.

**CHAPTER 86
COMPENSATION FOR DAMAGES FROM CRIMINAL ACTIVITIES**

NOTE: This Chapter was added by P.L. 20-155:2 (Mar. 21, 1990); amended and moved by P.L. 27-138:4 (Dec. 30, 2004) to Chapter 161, Title 8, Guam Code Annotated.

CLRC COMMENT: This chapter was moved to 8 GCA Chapter 186, however, its title and the note memorializing its removal have remained in the GCA since 2004. This chapter was referred to the Compiler of Laws for removal from the GCA.

**CHAPTER 87
VICTIM NOTIFICATION**

NOTE: This Chapter was enacted by P.L. 20-155:1 (Mar. 21, 1990) as Chapter 85. Since Chapter 85 was occupied, renumbered and codified by Compiler as Chapter 87. Repealed in its entirety by P.L. 27-138:3 (Dec. 30, 2004).

CLRC COMMENT: This Chapter 87 was repealed in its entirety by P.L. 27-138:3 (2004), which enacted 8 GCA Chapter 160 (Crime Victim's Rights Act of 2004). Victim notification is covered in that Chapter 160. This chapter was referred to the Compiler of Laws for removal from the GCA.

**CHAPTER 88
CRIMINAL JUSTICE SUBSTANCE ABUSE ACT**

~~§ 88.60. Report to the Legislature.~~

~~On or before September 1, 1996, the Superior Court of Guam, the Department of Corrections, the Territorial Parole Board, the Guam Police Department, and the Guam Behavioral Health and Wellness Center shall jointly make a report to a committee meeting of the Guam Legislature's standing committee with appropriate oversight (as designated by the Legislative Committee on Rules) regarding the implementation of this Act; the results of the programs created by this Act, including any reduction in substance abuse by offenders while incarcerated; the standardized procedures developed pursuant to this act; and the number and kinds of punitive sanctions imposed upon offenders pursuant to this Act.~~

CLRC COMMENT: Recommendation to repeal to remove an outdated reporting requirement.

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(subject to further revision)

CHAPTER 90
CORRECTIONS

ARTICLE 1
DEPARTMENT OF CORRECTIONS

§ ~~90.10~~ 90101. Definitions.

As used in this Chapter:

(a) *Director* means the Director of Corrections.

(b) *Department* means the Department of Corrections.

(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.

(d) Inmate means a person committed to the custody of the Director post-adjudication, after imposition of a sentence to a term of imprisonment.

(e) Prisoner means a person committed to the custody of the Director as a detainee or inmate.

CLRC COMMENT: Recommend renumbering all sections in this Chapter to comport with the rest of the GCA. Recommend adding new definitions (c), (d), and (e).

§ ~~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.~~

§ 90102. Mission Statement.

To promote public safety through custody and control of criminal offenders while providing a safe and humane environment for their treatment, rehabilitation, and reintegration back into the community as productive citizens.

CLRC COMMENT: Recommend replacing General Duties of Department of Corrections with a Mission Statement.

§ ~~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.

(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.~~

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(subject to further revision)

~~(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) (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 to dismiss the Corrections Officer *shall* be ineligible for reappointment or reemployment.~~

~~(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.~~

CLRC COMMENT: Recommend amendments with deference to Peace Officer Standards and Training (POST) laws and regulations.

§ 90.16.1 90104. 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, subject to the availability of funds.~~

~~(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.~~

CLRC COMMENT: According to the DOCO Subcommittee and DOC representatives, subsection (b) is superfluous because the request is already included in the annual appropriations request; for subsection (c), repeal was suggested because lack of funding/appropriations meant that DOC was unable to conduct training cycles on an annual basis.

§ 90.20. Corrections Advisory Council Established.

There is hereby 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

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~~Health and Social Services) or his designee, the Principal of the Vocational & Technical High School or his representative, the United States Attorney or his representative and, in addition, one (1) representative from the business community and one (1) member of the general public, who shall be appointed by the Governor with the advice and consent of the Legislature. The Director of the Department shall be ex officio secretary of the Council and the Department shall furnish necessary logistic support. The Council shall advise the Director and the Department as to the policies and procedures to carry out the intent and purposes of this Chapter.~~

CLRC COMMENT: Recommend deletion of this section. According to DOC, this Council has never met.

~~§ 90.25 90105. General Powers and Duties of Director to Establish Prisons.~~

~~(a) The Director shall establish and operate correctional institutions, and other places of confinement, for inmates and detainees 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.~~

~~(b) As head of the Department, the Director shall administer the Department, and:~~

~~(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.~~

~~(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.~~

~~(3) May delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.~~

~~(4) Shall, when the need arises to use correctional facilities to serve as overflow lock-up, keep inmates and detainees separate and apart.~~

~~(c) The Director shall have the authority to promulgate, adopt, and amend rules and regulations in accordance with the Administrative Adjudication Law (codified at Chapter 9 of Title 5, Guam Code Annotated) necessary to implement this Chapter and for the administration of the Department.~~

~~(d) The Director of the Department of Corrections must make reasonable efforts:~~

~~(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.~~

~~(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.~~

CLRC COMMENT: This section consolidates 90.25, 90.27, 90.30, 90.35 and 90.40 with amendments.

~~§ 90.27. Prison May Serve as Overflow Lock-Up.~~

~~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.~~

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CLRC COMMENT: Moved to 90105(b)(4) with amendments.

~~§ 90.30. Rules, Regulations & Disciplinary Rules Authorized.~~

~~The Director subject to the approval of the Governor by Executive Order, is authorized to make rules and regulations for the administration of correctional institutions and other places of confinement, including, but not limited to, necessary disciplinary measures for inmates thereof and for their treatment, care, labor, rehabilitation and reformation.~~

CLRC COMMENT: Moved to 90105(c) with amendments.

~~§ 90.35. Director to Control Organization of DOC; Appoint Staff.~~

~~(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.~~

~~(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.~~

~~(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.~~

CLRC COMMENT: Moved to 90105(b)(2) and (3) with amendments.

~~§ 90.40. General Duties of Director of Corrections.~~

~~As head of the Department, the Director:~~

~~(a) Shall administer the Department.~~

~~(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.~~

~~(c) May formulate and adopt rules necessary or proper for the internal administration of the Department, subject to the approval of the Governor.~~

CLRC COMMENT: Moved to 90105(b)(1) with amendments.

§ 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.

(b) All outpatient mental health services operations at the DOC Correctional Behavioral

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(subject to further revision)

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.

(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.

CLRC COMMENT: Recommendation to add a new 90106. this section was proposed by the CLRC Subcommittee on Drug & Other Criminal Offenses under the direction of its former Chair, the Honorable Elizabeth Barrett- Anderson (Attorney General of Guam (2015-2019 and 1987-1994), Judge of the Superior Court of Guam (1998-2102), and Senator of the 23rd and 24th Guam Legislatures), to statutorily mandate the establishment of medical, dental and mental health clinics within the Department of Corrections. In 1991, during her first term as Attorney General, the conditions of the Adult Correctional Facility, the Rosario Detention Facility and the Department of Mental Health and Substance Abuse Adult Inpatient Unit was addressed in a settlement agreement and consent decree reached in District Court of Guam Case No. CIV91-00020, wherein the United States sued the Government of Guam. This consent decree was dismissed by the District Court in 2017, during then-Attorney General Barrett-Anderson’s second term, and the settlement agreement provided the Government of Guam would provide inmates and detainees with adequate access to medical, dental, and mental health care. This new section on Correctional Medical Clinics will codify and make permanent the medical clinics currently in operation at the Department of Corrections, including the Behavior Health and Wellness Center Annex established there by Executive Order No 2020-21.

§ ~~90.41-90115~~. Inmate-Commissary.

~~Notwithstanding any other provision of law, the~~ The Department of Corrections (DOC) is authorized to operate or outsource the operation of an inmate 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.

CLRC COMMENT: Non-substantive amendments.

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§ 90.42-90116. Operation of ~~Inmate~~ Commissary.

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

(b) The Director may enter into a contract for the lease of space to accommodate the commissary. ~~In accordance with 5 GCA Chapter 5 (Guam Procurement Law), the Department of Corrections is authorized to enter into a contract for the lease of up to three hundred (300) square feet of its property for an inmate commissary. Procurement of said contract shall be done by a DOC staff member who is qualified under 5 GCA § 5141.~~

~~(c) Funds directed as a result of revenue received from the contract under Subsection (b) of this Section shall be subject to an annual audit by the Office of Public Accountability.~~

~~(d) When entering into a contract under Subsection (a) of this Section, the Director or the Director's designee shall consider the following:~~

- ~~(1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;~~
- ~~(2) the menu items offered by the provider and the price of those items;~~
- ~~(3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;~~
- ~~(4) safety and security procedures to be performed by the provider; and~~
- ~~(5) the performance record of the provider, including service availability, reliability, and efficiency.~~

~~(e) The Department of Corrections shall establish policy and procedures for the administration of this Section. Such policy and procedures shall be transmitted to I Liheslaturan Guåhan prior to operation of the inmate commissary.~~

~~(f) The Department of Corrections shall establish rules and regulations for the administration of this Section prior to operation of the inmate commissary.~~

§ 90.43. ~~Corrections Commissary Fund.~~

(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. ~~Any remaining balance in the CCF at the end of the fiscal year shall be carried over to the next fiscal year.~~

(d) ~~Inmate Improvement.~~ The Director may use up to fifty percent (50%) of the net proceeds of the CCF for inmate and detainee improvement. ~~to develop or enhance inmate welfare; and the other fifty percent (50%) shall be used for rehabilitation programs within the Department of Corrections.~~

CLRC COMMENT: 90.42 and 90.43 consolidated with amendments.

§ 90.44 90117. ~~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:

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

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

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

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

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

CLRC COMMENT: According to DOC, subsection (b) should be repealed as there is already a policy in place.

§ 90.45 90107. Authorization to Transfer Prisoners Inmates to Federal Correctional Institutions.

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.

§ 90.46 90108. 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

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unable to provide secure custody and proper care for the inmates thereof. Such statement shall be filed in the permanent records of the Department as soon after its execution as is practicable. Copies of such statement shall be delivered to the Parole Board and to the Office of the Attorney General within five (5) calendar days after its execution by the Director.

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

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

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

§ 90.47.90109. ~~Inmate Transfer:~~ Non-Emergency Transfers of Inmates.

The Director of Corrections is authorized to transfer an inmate to a correctional institution outside of Guam in non-emergency circumstances.

§ 90.47.01 90110. ~~Same:~~ Disciplinary Transfers of Inmates.

The Director may recommend the transfer of an inmate to an institution outside of Guam for disciplinary reasons in the following circumstances:

(a) when an inmate is alleged by an officer, employee or other inmate to have committed a violation of such institution's rules or regulations, which violation might constitute a threat to the order or discipline of the institution or to the ~~physical~~ safety of an officer, employee or any inmate; or harm to the public; or

(b) when an inmate is subsequently convicted of a violation of § 58.20 or § 58.30 of this Code, ~~or of any violent crime.~~

§ 90.47.02 90111. ~~Same:~~ Non-disciplinary Transfers of Inmates.

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:

(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

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(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.

§ 90.47.03 90112. Same: Procedures for Transfers of Inmates.

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 provide through Executive Order rules and regulations for the establishment of a Transfer Review Committee to include:~~

- ~~(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;~~
- ~~(b) provisions for due notice on a recommended transfer, which shall include timely notice to the inmate and the Attorney General; and~~
- ~~(c) provisions for hearing, final decision and appeal from a final decision of transfer; .~~
- ~~(d) provisions for maintaining~~ The Director shall maintain a record of each hearing.

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

§ 90.47.04. Same: Basis of Determination.

~~(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.~~

~~(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.~~

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

§ 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.~~

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

§ 90.48. Nursing Mothers Accommodations.

~~(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.~~

~~(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~~

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~~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.~~

CLRC COMMENT: Consolidated into 90105(d).

§ 90113. Transfers Pursuant to Treaty.

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'lahaen Guåhan* (the Governor of Guam) or the Director of the Department of Corrections, if designated by *I Maga'lahi* (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'lahaen Guåhan* (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.

CLRC COMMENT: Formerly 90.100, the only section in Article 5. Moved and consolidated under Article 1.

§ ~~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. ~~prisoners~~ 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 ~~prisoners~~ 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 ~~prisoners~~ inmates and detainees, including payment for ~~prisoners~~ inmates and 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.

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

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CLRC COMMENT: DOC requested repeal of subsection (c) because the requirement of legislative approval and appropriation made it administratively difficult to access the funds for DOC and inmate needs. There are already protections in place for expenditure and reporting/accounting of expenditure of the funds.

ARTICLE 2

WESTERN INTERSTATE CORRECTIONS COMPACT

- § ~~90.50~~ 90201. Purpose of Article.
§ ~~90.51~~ 90202. Compliance to §§ 90.46-90.48.
§ ~~90.52~~ 90203. Compact Stated.
§ ~~90.54~~ 90204. Director, Department of Corrections May Commit ~~Prisoner~~ Inmate Outside of Guam Pursuant to Terms of Compact.
§ ~~90.56~~ 90205. All Agencies of Government of Guam Shall Enforce Compact.
§ ~~90.58~~ 90206. Director, Department of Corrections May Hold Hearings as Required by Compact.
§ ~~90.60~~ 90207. Governor May Contract to Implement Compact.
§ ~~90.62~~ 90208. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.
§ ~~90.64~~ 90209. Severability.
§ ~~90.66~~ 90210. Effective Date.

§ ~~90.50~~ 90201. 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.

§ ~~90.51~~ 90202. Compliance to §§ ~~90.46-90.48~~ 90108 and 90109.

No person shall be transferred to a correctional institution outside of Guam unless the applicable provisions of §§ ~~90.46~~ 90108 [Emergency Transfers of Inmates], or ~~90.47-90109~~ [Non-emergency Transfers of Inmates], or ~~90.48~~ of this Code Chapter have first been complied with or unless such person has been legally sentenced to a term of imprisonment in such a correctional institution.

§ ~~90.52~~ 90203. Compact Stated.

The Compact as contained herein is hereby enacted into law and entered into on behalf of Guam with any and all states legally joining therein in a form substantially as follows:

Western Interstate Corrections Compact

Article I

Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently, high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this Compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

Article II

Definitions

As used in this Compact, unless the context clearly requires otherwise:

(a) *State* means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) *Sending State* means a state party to this Compact in which conviction was had.

(c) *Receiving State* means a state party to this Compact to which an inmate is sent for confinement other than a state in which conviction was had.

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(d) *Inmate* means a male or female offender who is under sentence to, or confined in, a prison or other correctional institution.

(e) *Institution* means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III

Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(3) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(4) Delivery and retaking of inmates.

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract herewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity, or provision, of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or installments as provided in the contract.

(c) The terms and provisions of this Compact shall be a part of any contract entered into by the authority of, or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV

Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this Compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the Territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the Territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this Compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of the sending state in institutions pursuant to this Compact including a conduct record of each inmate and certify said

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record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any all proceedings had pursuant to the provisions of this Subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this Subdivision shall be borne by the sending state.

(g) An inmate confined pursuant to this Compact shall be released within the Territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its Territory.

(h) Any inmate confined pursuant to the terms of this Compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this Compact.

Article V

Acts Not Reviewable in Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this Compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this Compact through any and all states party to this Compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this Compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escape.

Article VI

Federal Aid

Any state party to this Compact may accept Federal aid for use in connection with any institution or program, the use of which is or may be affected by this Compact or any contract pursuant hereto and any

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inmate in a receiving state pursuant to this Compact may participate in any such Federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

Article VII

Entry Into Force

This Compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this Article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington, and to Guam. Thereafter, this Compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this Compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this Article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

Article VIII

Withdrawal and Termination

This Compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the Compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its Territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this Compact.

Article IX

Other Arrangements Unaffected

Nothing contained in this Compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state of the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X

Construction and Severability

The preceding shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ ~~90.54~~ 90204. Director, Department of Corrections May Commit ~~Prisoner~~ Inmate Outside of Guam Pursuant to Terms of Compact.

The Director of Corrections may commit or transfer any inmate of a penal institution under his responsibility to any institution without Guam if Guam has entered into a contract or contracts for the confinement of inmates in such institution pursuant to Article III of the Compact.

§ ~~90.56~~ 90205. All Agencies of Government of Guam Shall Enforce Compact.

The courts, departments, agencies and officers of Guam shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective

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jurisdictions including but not limited to the making and submission of such reports as are required by the Compact.

§ 90.58 90206. Director, Department of Corrections May Hold Hearings as Required by Compact.

The Director of Corrections is hereby authorized and directed to hold such hearings as may be requested by any party state pursuant to Article IV(f) of the Compact.

§ 90.60 90207. Governor May Contract to Implement Compact.

The Governor is hereby empowered to enter into such contracts as may be appropriate to implement the participation of the territory of Guam in the Compact pursuant to Article III thereof.

§ 90.62 90208. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.

Where the inmate of an institution within Guam is committed or transferred to any institution outside Guam pursuant to § 90.54, and if such inmate is discharged in the receiving state by agreement pursuant to Article IV(g) of the Compact, where such inmate is a permanent resident of Guam the return transportation of such inmate to Guam shall be furnished by Guam.

§ 90.64 90209. Severability.

The provisions of this Article shall be severable and if any phrase, clause, sentence, or provision of the Article is declared to be invalid or the applicability thereof to any state, agency, person or circumstances is held invalid, the validity of this Article and the applicability thereof to any other state, agency, person or circumstance shall with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this Article be reasonably and liberally construed.

§ 90.66 90210. Effective Date.

This Article shall become effective upon the enactment of consent legislation by the United States Congress in accordance with Article VII of the Compact.

ARTICLE 3
INTERSTATE COMPACT ON JUVENILES

CLRC COMMENT: Recommendation to move this entire Article 3 to Title 19 Chapter 20 – Department of Youth Affairs.

~~§ 90.80. — Purpose of Article: Title.~~

~~§ 90.82. — Governor to Execute Compact: Compact Stated.~~

~~§ 90.84. — Chief Judge of Superior Court to be Compact Administrator: Duties.~~

~~§ 90.80. Purpose of Article: Title.~~

~~The purpose of this Article is to enact enabling legislation for the Interstate Compact on Juveniles, hereinafter referred to as the Compact. This Article may be cited as the Interstate Compact on Juveniles Enabling Act.~~

~~§ 90.82. Governor to Execute Compact: Compact Stated.~~

~~The Governor of Guam is hereby authorized to execute and enter into a Compact on behalf of t Guam with any and all states, territories, Trust Territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico legally joined therein in a form substantially as follows:~~

~~Article I~~

~~Finding and Purposes~~

~~That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and~~

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~~of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.~~

~~Article II~~

~~Existing Rights and Remedies~~

~~That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.~~

~~Article III~~

~~Definitions~~

~~That, for the purposes of this Compact:~~

~~(a) *delinquent juvenile* means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court;~~

~~(b) *Probation or parole* means any kind of conditional release of juveniles authorized under the laws of the states party hereto;~~

~~(c) *Court* means any court having jurisdiction over delinquent, neglected or dependent children.~~

~~(d) *State* means any state, territory, and Trust Territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and~~

~~(e) *Residence or any variant thereof* means a place at which a home a regular place of abode is maintained.~~

~~Article IV~~

~~Return of Runaways~~

~~(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate; and shall be accompanied by two (2) certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made shall hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, after a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and~~

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~~that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provision of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who shall appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such juvenile over the officer whom the court demanding him shall have appointed to receive him. The judge, however may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who shall appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state; or if he is suspended of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the law of that state.~~

~~(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation cost of such return.~~

~~(c) That juvenile as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.~~

Article V

Return of Escapes and Absconders

~~(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by the affidavit, shall be executed in duplicate, and shall be accompanied by two (2) certified copies of judgment, formal adjudication, or order of commitment~~

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~~which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. The delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who shall appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, such person may be taken into custody in any other state party to his Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, at will enable his detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.~~

~~(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation cost of such return.~~

~~Article VI~~

~~Voluntary Return Procedure~~

~~That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without requisition in another state party to this Compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state to which the court is located and the judge shall direct the officer having the juvenile or delinquent~~

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juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return; and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII

Cooperative Supervision of Probationers and Parolees

~~(a) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called 'receiving state') while on probation or parole and the receiving state shall accept such delinquent juvenile if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigation as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.~~

~~(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.~~

~~(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but, if at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.~~

~~(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.~~

Article VIII

Responsibility for Costs

~~(a) That the provisions of Articles IV (b), V (b), and VII (d) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.~~

~~(b) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this Compact.~~

Article IX

Detention Practices

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(subject to further revision)

~~That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lock up nor be detained or transported in association with criminal, vicious or dissolute persons.~~

~~Article X~~

~~Supplementary Agreements~~

~~That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to this being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating state.~~

~~Article XI~~

~~Acceptance of Federal and Other Aids~~

~~That any state party to this Compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this Compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.~~

~~Article XII~~

~~Compact Administrators~~

~~That the Chief Judge of the Superior Court of Guam shall be the Compact Administrator and who, acting jointly with like officers of other states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.~~

~~Article XIII~~

~~Execution of Compact~~

~~That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.~~

~~Article XIV~~

~~Renunciation~~

~~That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six (6) months' notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereto shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six (6) months' renunciation notice of the present Article.~~

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(subject to further revision)

~~Article XV~~
~~Severability~~

~~That the provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters.~~

~~Article XVI~~

~~Out of State Confinement~~

~~(a) This Article, known as the Out of State Confinement Amendment to the Interstate Compact on Juveniles, is hereby enacted into law and entered into by this Territory with all other states legally joining therein the form substantially as follows:~~

~~(1) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the Territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.~~

~~(2) Escapees and absconders who could otherwise be returned pursuant to Article V of the Compact may be confined or reconfined in the receiving state pursuant to this Article. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such Article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this Paragraph preliminary to disposition of the escapee or absconder.~~

~~(3) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this Article shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.~~

~~(4) As used in this Article: (1) sending state means sending state as the term is used in Article VII of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the Compact; (2) receiving state means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this Article.~~

~~(5) Every state which adopts this Article shall designate at least one of its institutions for delinquent juveniles as a Compact Institution and shall confine persons therein as provided in Paragraph (a) hereof unless the sending and receiving state in question shall make specific contractual arrangement to the contrary. All states party to this Article shall have access to Compact Institutions at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.~~

~~(6) Persons confined in ACompact Institutions@ pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said ACompact Institution@ for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.~~

~~(7) All persons who may be confined in a "ACompact Institution"@ pursuant to the provisions of this Article shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this Article be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee or absconder may be entitled (prior to~~

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~~confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.~~

~~(8) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this Compact may enter into supplementary agreements determining a different allocation of costs as among themselves.~~

~~(A) Rules and regulations necessary to effectuate the terms of this Article may be promulgated by the appropriate officers of those states which have enacted this Article.~~

~~(B) In addition to any institution in which the authorities of this Territory may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to this Article, confine or order the confinement of a delinquent juvenile in a Compact Institution within another party state.~~

§ 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.

~~Pursuant to the Compact the Presiding Judge of the Superior Court shall be the Compact Administrator and shall promulgate rules and regulations to carry out the terms of the Compact. The Compact Administrator may enter into agreements with appropriate officials of other states or territories pursuant to the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of Guam in facilitating the proper administration of the Compact or of any agreements entered into by Guam thereunder.~~

ARTICLE 4
PRISON INDUSTRIES

~~§ 90.90 90401. Prison Industries, Established.~~

~~§ 90.91 90402. Prison Industries Revolving Fund.~~

§ 90.90 90401. 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.~~

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~~(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(e) 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.~~

CLRC COMMENT: See comment to 90.20, recommended for repeal above. This Council has never met.

§ ~~90.91~~ 90402. 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.~~

CLRC COMMENT: Use of the Prison Industries Revolving Fund should be addressed by departmental rule.

ARTICLE 5

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(subject to further revision)

~~TRANSFER PURSUANT TO TREATY~~

~~§ 90.100. [Untitled Section].~~

~~§ 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'lahaen Guåhan* (the Governor of Guam) or the Director of the Department of Corrections, if designated by *I Maga'laha* (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'lahaen Guåhan* (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.~~

CLRC COMMENT: Moved to Article 1 of this Chapter and renumbered to 90113.

ARTICLE 6

CIVILIAN CORRECTIONS RESERVE PROGRAM

- ~~§ 90.201 90601.~~ Creation.
- ~~§ 90.202 90602.~~ Functions and Duties.
- ~~§ 90.203 90603.~~ Recruitment.
- ~~§ 90.204 90604.~~ Training, Equipping, and Maintenance of Records.
- ~~§ 90.205 90605.~~ Reservist: Authority.
- ~~§ 90.206 90606.~~ Same: Allowance.
- ~~§ 90.207 90607.~~ Authorization for Full-Time CCRP Officers.
- ~~§ 90.208 90608.~~ Same: Eligibility and Oath.
- ~~§ 90.209 90609.~~ Rules and Regulations: Recommendations.

§ 90.201 90601.

(a) There is hereby created within the Department of Corrections (DOC) the Civilian Corrections Reserve Program (CCRP), which *shall* be headed by the Director of DOC (Director).

(b) The Director, subject to the advice and control of the Governor, *shall* be responsible for carrying out the purposes of this Article, and shall have such additional duties and responsibilities as are authorized herein, or as may be prescribed by the Governor.

§ 90.202 90602. Functions and Duties.

(a) The general functions and duties of the CCRP *shall* be to provide backup manpower to protect the public from the destructive actions of law offenders through control and rehabilitation. It *may* provide staff services to the Judiciary, the Parole Board, probation officers, and interested agencies of the Executive Branch.

(b) The Director *shall* formulate a program whereby the CCRP *shall* adhere to the functions and duties herein prescribed. From time to time, the Director shall review and revise the functions and duties of the CCRP to ensure an amicable discharge of responsibilities and duties acknowledging the fact that their roles are an extension of the duties of the regular personnel.

§ 90.203 90603. Recruitment.

(a) The Director *shall* recruit, on an entirely volunteer basis, local residents who desire to make available their services to assist the Department of Corrections in carrying out the function of protecting the public from the destructive actions of law offenders through control and rehabilitation.

(b) The Director *shall* further promulgate rules and regulations for recruitment regarding the age, health, and other requirements.

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(c) Nothing in this Section shall prohibit the Director from recruiting a resident who is a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

§ ~~90.204~~ 90604. Training, Equipping, and Maintenance of Records.

(a) Training for the CCRP members *shall* be conducted pursuant to the provisions of the Peace Officer Standards and Training (POST) Commission in 17 GCA Chapter 51. Initial training requirements *shall* be identical to those required of DOC cadets.

(b) The Director *shall* maintain a roster of reservists who have received the training prescribed by 17 GCA Chapter 51. In order to maintain membership in the CCRP, each member must keep up with his scheduled training, and no reservist may remain in the CCRP if he or she is unable to keep up with or otherwise absorb the training. Additionally, basic supplies and equipment *shall* be provided to ensure a constant operability of the CCRP, including a continuing program for replacement.

(c) Any member of the CCRP who has *not* met the minimum qualifications/certifications for firearms safety and proficiency, physical fitness, recruitment clearances, and background checks *shall not* be allowed to serve in the CCRP.

§ ~~90.205~~ 90605. Reservist: Authority.

Whenever members of the CCRP are rendering assistance to DOC, such volunteers *shall* have the same powers, duties, rights (including coverage under the Worker's Compensation Act), privileges and immunities, as if they were paid, full-time members of the Department of Corrections, except that they *shall* earn recruitment credit for services performed as volunteers.

§ ~~90.206~~ 90606. Same: Allowance.

Each member of the CCRP who successfully completes probationary requirements as established by the Director, and who serves a minimum of twenty (20) hours to maintain good standing as a CCRP officer, and forty-two (42) hours per month, *shall* receive an allowance of Five Hundred Dollars (\$500) per month to defray the cost of maintenance of their equipment and uniforms. The Department of Corrections *shall* identify funds within their department appropriations to satisfy the intent of this Section.

§ ~~90.207~~ 90607. Authorization for Full-Time CCRP Officers.

(a) The Department of Corrections (DOC) may employ a CCRP officer on a temporary, full-time basis, if such officer is an active member and has attained at least two thousand eighty (2,080) cumulative service hours when a critical need arises due to military activation of DOC officers or absence due to long-term disability status that has been certified by a medical doctor. DOC may exercise this authority provided its authorized budget for personnel is *not* exceeded. The CCRP officer *shall* return to reservist status pursuant to this Article when the incumbent returns from military service or long-term disability or at the discretion of the Director.

(b) When employed by DOC, a CCRP officer may only serve as an equivalent of Corrections Officer I and be compensated as a Corrections Officer I, Step I. Said CCRP officer *shall* be eligible to receive sick leave, be eligible for the Government of Guam Health Insurance Program, and *shall not* be eligible for a stipend as a Reserve officer for the duration of their temporary employment with DOC.

(c) A CCRP reservist *shall* be offered permanent employment in the event a permanent position becomes available at DOC; provided, that the reservist meets all of the qualifications as prescribed in this Article. The Director *shall* promulgate rules and regulations that determine the order in which reservists are selected for permanent service.

(d) Notwithstanding 10 GCA § 77114(a)(1), a CCRP officer who serves as a Corrections Officer I, Step I under this Section may be a non-immigrant alien admitted into Guam under the Compacts of Free

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Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

§ ~~90.208~~ 90608. Same: Eligibility and Oath.

(a) No person shall be a volunteer member of the CCRP established under this Article who advocates a change by force or violence in the constitutional form of the Government of the United States or of Guam, or the overthrow of any government in the United States by force, or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(b) Every volunteer *shall*, entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in Guam, which oath *shall* be substantially as follows:

“I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the laws of Guam, against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter and I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the Government of the United States or of Guam by force or violence; and that during such time as I am a member of the Civilian Corrections Reserve Program I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or Guam by force or violence.”

§ ~~90.209~~ 90609. Rules and Regulations: Recommendations.

The Director is authorized and empowered to recommend to the Governor for issuance as executive orders the making, amendment, and rescission of such orders, rules and regulations as may be necessary to carry out the provisions of this Article.

ARTICLE 7

THE DEPARTMENT OF CORRECTIONS MODERNIZATION ACT OF 2021

- § ~~90.301~~ 90701. Legislative Findings and Policy.
- § ~~90.302~~ 90702. Definitions.
- § ~~90.303~~ 90703. Authorization to Enter into Long-Term Leases.
- § ~~90.304~~ 90704. Identification of Projects and Procurement.
- § ~~90.305~~ 90705. Responsibility of Contractor/Developer.
- § ~~90.306~~ 90706. Contractual Safeguards.
- § ~~90.307~~ 90707. Assignments.
- § ~~90.308~~ 90708. Pledge or Reservation of Revenues.
- § ~~90.309~~ 90709. Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.
- § ~~90.310~~ 90710. Prison IT, Building, and Security Management System.
- § ~~90.311~~ 90711. Utilities and Routine Maintenance and Repair.
- § ~~90.312~~ 90712. Maintenance Fund.
- § ~~90.313~~ 90713. Rules and Regulations.
- § ~~90.314~~ 90714. Financial Plan Required.

§ ~~90.301~~ 90701. Legislative Findings and Policy.

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

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

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

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

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

(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

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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.

§ ~~90.302~~ 90702. Definitions.

For the purposes of this Article and unless otherwise specified, the following words and phrases are defined to mean:

(a) *Act* means Article 7 of Title 9, Chapter 90, Guam Code Annotated, which shall be known as “The Department of Corrections Modernization Act of 2021.”

(b) *Contract* shall mean the design, construction, and financing contract entered by and between the Government of Guam and the contractor following negotiations on the response to the Request for Proposal.

(c) *Contractor/developer* shall mean the authorized entity which shall be the signatory on the contract and shall be fully responsible for carrying out the finance, design, construction, and maintenance of the new Department of Corrections. The contractor/developer may cooperate with another entity or entities in any manner the contractor/developer deems appropriate to provide for the financing, design, and construction of the new Department of Corrections envisioned by this Chapter.

(d) The *Department of Corrections Construction Committee* shall be chaired by the Administrator or Deputy Administrator of the Guam Economic Development Authority, and include the Director and Deputy Director of the Department of Corrections, the Director or Deputy Director of the Department of Public Works, the Director or Deputy Director of the Department of Land Management, the Director or Deputy Director of the Bureau of Statistics and Planning, the Director or Deputy Director of the Bureau of Budget and Management Research, and the Director or Deputy Director of the Department of Administration.

(e) *Correctional agency* shall mean the Department of Corrections.

(f) *Correctional facility* shall mean the Department of Corrections Adult Correctional Facility.

(g) *Lease* shall mean a lease from the Government of Guam itself or through the Department of Corrections to the contractor/developer entered at the time of the contract for the property.

(h) *Lease-back* shall mean the lease from the Guam Economic Development Authority and/or the contractor/developer to the Government of Guam itself or by and through the Department of Corrections of the newly constructed Department of Corrections.

(i) *Property* shall mean any property on which a new Department of Corrections is located.

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(subject to further revision)

§ ~~90.303~~ 90703. Authorization to Enter into Long-Term Leases.

(a) For the purpose of facilitating the financing, design, construction, and maintenance of the new Department of Corrections encompassed by this Act, the Government of Guam is authorized to lease property that will be used for the new Department of Corrections, as required, to the contractor/developer and/or the Guam Economic Development Authority; provided, such property is in the inventory of the Government of Guam.

(b) The Government of Guam is also authorized to lease-back from the contractor/developer and/or the Guam Economic Development Authority the property for a period mutually agreed upon between the Government of Guam and the contractor/developer and/or the Guam Economic Development Authority as may be reasonably necessary to amortize the lease-back period of no more than thirty (30) years the cost associated with the design, construction, and maintenance of the new Department of Corrections. In no event shall the end of such lease-back period be structured as an annually renewable lease with a provision for automatic renewals to the extent that pledged revenue under § 90.308 is available. The lease-back shall not be construed as a debt under any applicable debt limitation under the Organic Act of Guam or Guam law.

§ ~~90.304~~ 90704. Identification Projects and Procurement.

(a) The Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall utilize the program study of the correctional agency to identify and prioritize potential projects to be completed.

(1) The list of projects identified by the Program Study of the correctional agency shall be included in one (1) Request for Proposal developed by the Guam Economic Development Authority.

(A) Upon receipt of the Program Study, the Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall solicit Request for Proposals (RFP) for a contractor/developer, in compliance with the Guam Procurement Law, for the financing, design, and construction of the Department of Corrections, according to the needs of the correctional agency and consistent with this Article.

(B) GEDA is also hereby authorized to solicit the services for a Program Management Office, which shall include, but not be limited to, creating scopes of work, coordinating projects and performance targets, conducting periodic quality control reviews, assuring timely product generation and response, and managing the project to produce a quality product within the budget and schedule.

(2) The choice of the contractor/developer shall be made by the Department of Corrections Construction Committee. The committee shall assess the prior performance of the contractor/developer on similar projects, and shall be free to disqualify any contractor/developer that does not have a successful record of project completion on Guam or any similar isolated locality.

(b) The Committee shall also specifically consider the contractor/developer's ability and performance with regards to the financing, development and construction of a correctional facility on Guam or any similar isolated locality.

(c) The selection of a contractor/developer shall be based upon the proposal that delivers the lowest cost value for Guam in meeting the objectives of the correctional agency.

(d) GEDA shall issue an RFP within thirty (30) days after the conclusion of its Program Study, in consultation with the Department of Corrections for the design, construction, and maintenance of the correctional facilities.

§ ~~90.305~~ 90705. Responsibility of Contractor/Developer.

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(subject to further revision)

The contract shall require that the contractor/developer be responsible for all costs, expenses, and fees of any kind or nature, associated with the design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of the Department of Corrections to the extent provided by GEDA in consultation with the Department of Corrections in the Request for Proposal. The lease may, for the purposes herein, provide that its term shall be extended for a period not to exceed the shorter of ten (10) years beyond the original term of the lease-back, or such period of time as is necessary to repay in full any financing arranged pursuant to § 90.309 of this Article.

§ ~~90.306~~ 90706. Contractual Safeguards.

Prior to undertaking the work of finance, design, construction, and maintenance of the new Department of Corrections, the Guam Economic Development Authority, in consultation with the Department of Corrections and the contractor/developer, shall negotiate and enter into a binding construction contract to build the new Department of Corrections in accordance with Guam Building Code under 21 GCA Chapter 67, Guam Fire Safety Codes and any other applicable requirements. The construction contract shall contain contractual obligations typically found in Government of Guam construction contracts, including, but not limited to:

- (a) warranties;
- (b) liquidated damages;
- (c) performance and payments bonds;
- (d) indemnity;
- (e) insurance;
- (f) standard specifications;
- (g) technical specifications;
- (h) progress schedule;
- (i) maintenance;
- (j) compliance with Guam labor regulations;
- (k) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;
- (l) compliance with Public Law 28-98: restriction against contractors employing convicted sex offenders to work at Government of Guam venues; and
- (m) the 2017 Guam Tropical Energy Code.

The contract must be approved as to form and legality by the Attorney General of Guam.

§ ~~90.307~~ 90707. Assignments.

To facilitate the purpose of this Act and provide security for the holders of any financing instruments issued pursuant to this Act, the contractor/developer may assign, without the need of the consent of the Guam Economic Development Authority, the contract, the lease and the lease-back to any underwriter, trustee, or other party as appropriate to facilitate the contractor/developer financing.

§ ~~90.308~~ 90708. Pledge or Reservation of Revenues.

(a) Rental payments under the lease and the lease-back may be secured by a pledge or other reservation of revenues collected by the Government of Guam from the following:

- (1) The sum of no more than Five Million Dollars (\$5,000,000) from the revenues received pursuant to 11 GCA Chapter 42, Earned Income Tax Credit will be available for Fiscal Year 2022 only.
- (2) The sum of no more than Five Million Dollars (\$5,000,000) from the General Fund shall be appropriated annually thereafter.

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

(3) The Governor of Guam may use federal funds that are made available to the Government of Guam by the United States Federal Government for the financing, design, construction, and maintenance of the new Department of Corrections facility.

(4) The use of other financing options is authorized for the purpose of this Act, including, but not limited to, loans, grants, bond financing, and other alternate funding options, subject to legislative approval.

(b) Any amounts reserved or pledged as provided in this Section shall be subject to annual appropriations for the purpose of making lease-back payments. The revenues pledged or reserved and thereafter received by the Government of Guam or by any trustee, depository, or custodian shall be deposited in a separate account and shall be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further action, and such reservation or the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need be recorded.

§ ~~90.309~~ 90709. Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.

(a) To minimize the financing cost to the Government of Guam, financing utilized by the contractor/developer to fund the design, construction, and maintenance of the Department of Corrections shall be through tax-exempt obligations, taxable bond obligation, or other financial instruments; provided, such financing is available at interest rates determined by the Guam Economic Development Authority to be reasonable and competitive. The Guam Economic Development Authority shall be the issuer of any financial instruments or obligations unless the Guam Economic Development Authority waives its right to serve as the issuer of financial instruments or obligations. Alternatively, the contractor may use an alternative method of financing, including, but not limited to, a short-term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States of America if such financing will better serve the needs of the people of Guam. Such alternative financing shall be approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure that the Government of Guam pays the lowest possible interest rate so that the cost of the Government of Guam’s financing of the design and construction of the Department of Corrections, amortized through the lease-back payments from the Government of Guam to GEDA and or the contractor/developer, will be lower than regular commercial rates.

(b) *I Liheslaturan Guahan*, pursuant to § 50103(k) of Chapter 50, Title 12, Guam Code Annotated, hereby authorizes the Guam Economic Development Authority to issue one or more additional series of tax-exempt and/or taxable obligations (in any case, the “bonds”) for the purpose of financing the Department of Corrections Adult Correctional Facility, in an aggregate principal amount not to exceed Eighty Million Dollars (\$80,000,000) for the following purposes:

(1) to finance the design, construction, and/or the maintenance of the Department of Corrections Adult Correctional Facility;

(2) to fund a deposit to a debt service reserve fund;

(3) to fund capitalized interest with respect to the bonds; and

(4) to pay expenses relating to the authorization, sale, and issuance of the bonds, including without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks, or other financial institutions providing credit enhancement fees, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale, and delivery of the bonds, subject to the following additional conditions:

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(subject to further revision)

(A) The terms and conditions of the bonds shall be as determined by the Guam Economic Development Authority by the execution of a certificate, trust agreement or indenture authorizing the issuance of the bonds; provided, however, that such terms and conditions shall be consistent with this Section, that the bonds shall have a final maturity not to exceed thirty (30) years; and an interest rate not to exceed seven percent (7%).

(B) No bonds authorized by this Section shall be sold until the Board of Directors of Guam Economic Development Authority has approved the sale by resolution, as provided in Chapter 50 of Title 12, Guam Code Annotated.

(C) The issuance of bonds pursuant to this Section shall not be subject to the approval of the voters of Guam.

§ ~~90.310~~ 90710. Prison IT, Building, and Security Management System.

(a) For the purpose of ensuring the long-serving duration of the Department of Corrections facility, GEDA may include in the specifications for the new correctional facility, the requirement for a prison information management system, a security and surveillance system, and a building management system. These systems identified must be done in consultation with the Department of Corrections and comply with the federal mandates related to prison records and to foster compliance with the Federal Standards for Prisons and Jails.

(b) GEDA, in consultation with the Department of Corrections, may determine the specifications for such systems based on comprehensive, state-of-the-art technology generally accepted within the United States Prison Industry in connection with the development for a new Department of Corrections facility. The specifications shall require that all systems are designed by the same software developer so as to ensure the delivery of the rehabilitation to the inmates.

(c) In order to ensure immediate response to system downtimes or failure, GEDA may include in the specifications the requirement that the provider of these systems have a local Guam Office and service technicians stationed on Guam.

§ ~~90.311~~ 90711. Utilities and Routine Maintenance and Repair.

The contractor/developer shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone, and cable and all maintenance and repair and exterior groundskeeping and landscaping and upkeep of the Department of Corrections.

§ ~~90.312~~ 90712. Maintenance Fund.

The contract with the contractor/developer, and the lease-back shall provide that all capital maintenance and repair of the Department of Corrections facility be performed by the contractor/developer. The contractor/developer shall provide sufficient funding for a separate maintenance fund for this purpose; sufficient funds for this purpose shall be defined as the cost of capital maintenance and repair for the remaining period of the lease agreement with the Government of Guam after the completion of the Department of Corrections. The maintenance fund shall be used exclusively for the purpose of capital maintenance and repair and shall be in an interest-bearing account segregated from other funds held in escrow.

§ ~~90.313~~ 90713. Rules and Regulations.

The Guam Economic Development Authority, in consultation with the Department of Corrections, may promulgate rules and regulations pursuant to the Administrative Adjudication Law as necessary to implement the provisions of this Article.

§ ~~90.314~~ 90714. Financial Plan Required.

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

GEDA shall prepare a financial plan in accordance with the following:

(a) At a minimum, the financial plan shall include a comprehensive report of the associated costs and sources of revenues required for the duration of the Department of Corrections Modernization Act of 2021 (Project). The financial plan should reflect the total Project cost and any phases that represent the Project development priorities. All anticipated Project revenues shall be matched and allocable to the anticipated Project costs and shall detail its impact on the overall debt ceiling.

(b) The financial plan shall be submitted to *I Maga'hågan Guåhan* and transmitted to the Speaker of *I Liheslaturan Guåhan*. No solicitation of Request For Proposal or invitation for bid authorized to effectuate the requirements of this Act may be issued until the financial plan is delivered to the Speaker of *I Liheslaturan Guåhan*.

CHAPTER 93
CRIMINAL SEXUAL CONDUCT ASSESSMENT AND REHABILITATION ACT

§ 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.~~

CLRC COMMENT: Recommendation to repeal to remove unnecessary and duplicative language.

ATTACHMENT 4 – APPROVED RECOMMENDATIONS
(subject to further revision)

TITLE 10 GUAM CODE ANNOTATED
CHAPTER 60 FIREARMS

§ 60109. Concealed Firearms.

No identification card shall be issued permitting the holder to carry a concealed firearm of any nature unless:

~~(a) the applicant shows exceptional cause therefore. Such exceptional causes shall include, but not be limited to, facts which show that such concealment is absolutely necessary for an individual who is engaged in the protection of persons or property, or who shows that he has a genuine reason to fear for the safety of his person or property and that a concealed firearm would materially lessen the danger. Such permission, once stated upon the identification card, shall not be renewed unless, at the time for renewal, the application shows a continuing need for such permission, using the standards for such permission as they exist at the time for renewal. It shall be unlawful for any person to carry any firearm concealed unless he has received permission to carry such firearm and such permission is stated upon the face of his identification card; or~~

~~(b) an applicant meets the requirements for a concealed firearms license as defined in §60109.1 of this Chapter. It shall be unlawful for any person to carry any firearm concealed unless he has received permission in accordance with the provisions of this Chapter to carry such firearm and such permission is stated upon the face of his identification card.~~

CLRC COMMENT: The “exceptional cause” requirement has been found to be unconstitutional *See New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

§ 60110. Registration.

Any person purchasing, receiving by gift, device or otherwise, acquiring or otherwise coming into permanent possession of a firearm, the possession of which is permitted by this chapter, shall register the same with the Department within ~~three (3)~~ five (5) working days after acquiring said firearm on the forms specified by the Department provided however any member of the United States Coast Guard or any Armed Forces of the United States arriving in Guam for a permanent change of station (“PCS”), or a dependent of the same, shall have 180 days from the arrival of the firearm(s) with their household goods to register such firearm(s). Failure to register shall result in a civil fine of \$10.00 per day that the firearm is unregistered, in addition to the other penalties provided in this chapter. Any such fines shall be paid to the Treasurer of Guam for the account of the Department of Revenue and Taxation. Such facts and information shall be given so as to enable the Department to record for identification purposes the firearm so registered. It shall be unlawful for any person to own or possess any firearm which has not been registered. No firearm may be registered by the Department unless the person presenting the firearm also displays current identification card evidencing his eligibility to own, possess, use or carry the firearm presented for inspection as to the facts required for registration. Any firearm registration which expires on or after March 1, 1988 or which is thereafter issued under this chapter shall be permanent for as long as the registrant retains the firearm. The Chief of Police shall promulgate rules and regulations establishing a permanent firearms identification card and a reasonable fee to cover the cost incurred.

CLRC COMMENT: Amendments to alleviate issues with military members registering firearms brought into Guam. Grace period is consistent with the grace period in § 60110.1.

§ 60110.1. Firearms

A grace period for payment of fees due for renewal of registration or for new registration for a firearm for a member of the United States Coast Guard or any Armed Forces of the United States including but not limited to the Guam National Guard or Reserves or a dependent of a member of the same of the Guam National Guard or Reserves, shall be in effect while that member is on active service outside Guam and for the next one hundred eighty (180) days after completion of such service. No interest or penalties shall be assessed for any period prior to expiration of the one hundred eighty (180) days.

CLRC COMMENT: Amendments for consistency with changes recommended for § 60110.