



# Judiciary of Guam

Guam Criminal Law and Procedure Review Commission  
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910  
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HON. ROBERT J. TORRES  
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA, III  
PRESIDING JUDGE

HON. JONATHAN R. QUAN  
CHAIRMAN

ANDREW SERGE QUENGA  
EXECUTIVE DIRECTOR

## GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION (CLRC) PLENARY MEETING | THURSDAY, FEBRUARY 6, 2025 MINUTES

### I. CALL TO ORDER

The meeting was called to order by Chairman Jonathan Quan at 12:15 PM.

### II. PROOF OF DUE NOTICE OF MEETING

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

### III. DETERMINATION OF QUORUM

CLRC Administrative Support Lisa Ibanez called the roll.

CLRC Members:

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

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

Hon. Anita A. Sukola, Present on Zoom, San Francisco, California

Atty. William Bucky Brennan, Present, Judiciary of Guam

DOC Director Fred Bordallo, or Designee Antone F. Aguon, (No response during roll call)

Chief of Police Designee Sgt. Michael Elliott, Present on Zoom, Tamuning

Atty Joseph B McDonald, Present on Zoom after roll call, Tumon

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

Mr. Monty McDowell, Present, Judiciary of Guam

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

Attorney General Douglas Moylan or Designee DAG Nathan Tennyson, Present on Zoom, Tamuning

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

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

Atty. Christine Tenorio, (No response during roll call)

Atty. Phillip Tydingco, (No response during roll call)

Ex-Officio, (Non-Voting Members)

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

Compiler of Laws Geraldine Cepeda, Present on Zoom, Agaña Law Library

Chairman Quan acknowledged a quorum present.

### IV. DISPOSAL OF MINUTES: December 3, 2024

The minutes from the previous Plenary Meeting, December 3, 2024, were approved without objection.

## **V. OLD BUSINESS**

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

Director Quenga provided an informational report.

- The Property, Persons, and Criminal Procedure Subcommissions have been assigned additional Title 9 chapters that were originally assigned to the Drugs and Other Criminal Offenses Subcommittee. This will expedite collective review of Title 9. DOCO is currently reviewing Chapter 67 on controlled substances, which is one of the longest and most complex chapters in Title 9.
- The Commission's fourth-quarter report will be released soon.

## **VI. NEW BUSINESS**

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

Subcommittee Ex-Officio Member Compiler of Laws Geraldine Cepeda presented DOCO's recommendations. Compiler Cepeda's PowerPoint presentation is included as Attachment 1.

- 9 GCA Chapter 67. Guam Uniform Controlled Substances Act.
  - § 67.401.1. Possession, Etc. for Illegal Delivery, Dispensing or Manufacturing; Defined; Punishments Classified According to Drug Class Involved. Attachment 1, Slide 2.
    - Discussion: Initial recommendation of no change was tabled pending the Subcommittee's review of §§ 67.401.4, 67.401.5, 67.401.6, and 67.401.9 at the suggestion of Attorney Cunliffe.
  - § 67.401.2. Illegal Possession; Defined and Punishment. No change as shown in Attachment 1, Slide 3.
    - Discussion: Case law reviewed, no challenges or litigated in any way.
  - § 67.401.2.1. Inhalants. Move out of Chapter 67 as shown in Attachment 1, Slide 4.
    - Discussion: Substances used as inhalants often are not controlled substances, so should not be codified in Chapter 67. Executive Director stated that any recommendation to move a section from its existing placement should be deferred to the Compiler of Laws working with the CLRC because Title 9 will likely be reorganized in the CLRC's submission to the Legislature.
  - § 67.401.2.2. List of Known Inhalants with Potential for Abuse. Move out of Chapter 67 as shown in Attachment 1, Slide 4.

- Discussion: Substances used as inhalants often are not controlled substances, so should not be codified in Chapter 67. It was also noted that the offenses had not been prosecuted to the recollection of subcommission and the list of inhalants mandated by 67.401.2.2 is outdated.
  - § 67.401.2.3. Pseudoephedrine: Retail Sale. No change as shown in Attachment 1, Slide 9.
    - Discussion: Pseudoephedrine should remain as it is known as a precursor for meth.
  - § 67.401.3. Penalties in Addition to any Civil Penalties. No change as shown in Attachment 1, Slide 10.
    - Discussion: Part of the uniform Controlled Substances Act since its enactment in 1998.
  - §§ 67.401.4 (Prison Terms for Drug Offenders), 67.401.5 (Fines for Drug Offenses), 67.401.6 (Additional Fines in Drug Offenses), and 67.401.9 (Importation and Exportation Penalties). All tabled as shown in Attachment 1, Slide 11.
    - Discussion: Tabled pending additional research to determine changes/trends in federal and other state law. Uniform Controlled Substances Act enacted in 1998; consider progress in treatment and changes in laws
  - § 67.401.7. Information for Sentencing. No change as shown in Attachment 1, Slide 12.
    - Discussion: Part of the 1998 enactment. Should remain.
  - § 67.401.8. Establishing Previous Convictions. No change shown in Attachment 1, Slide 13.
    - Discussion: No change.
  - § 67.401.9. Importation and Exportation Penalties. Attachment 1, Slide 15.
    - Discussion: Tabled for further review by subcommission.

Chairman Quan called for a motion to approve the recommendations to table §§ 67.401.1, 67.401.4, 67.401.5, 67.401.6 and 67.401.9; for no change on §§ 67.401.2, 67.401.2.3, 67.401.3, 67.401.7, and 67.401.8; and to repeal and reenact (move) §§ 67.401.2.1 and 67.401.2.2. Approved without objection.

**B. Subcommittee on Crimes Relating to Property: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval**

Subcommission Member Attorney William Brennan presented his Subcommission's recommendations. Attorney Brennan's presentation is included as Attachment 2.

- 9 GCA Chapter 13. Attempt, Solicitation, Conspiracy.
  - § 13.10. Attempt: Defined. No change but add a note as shown in Attachment 2, Slide 4.
    - Discussion: Tabled. Recommend a note be added to this section to reflect the Supreme Court's holding in *People v. Tedtaotao*, 2015 Guam 31.
  - § 13.20. Solicitation. Amend as shown in Attachment 1, Slide 6.
    - Discussion: Change the word "felony" to "crime" to be more comprehensive and consistent with similar recommendations made by this subcommission. Other jurisdictions reviewed, specifically the New Jersey statute, which did not include the felony distinction.
  - § 13.35. Same: Multiple Criminal Objectives. No change decided as shown in Attachment 2, Slide 5.
    - Discussion: Tabled. Recommend a note be added to reflect conflicting Superior Court decisions regarding this section.
  - § 13.60. Attempt, Solicitation, Conspiracy: Degree of Offense Stated. Amend as shown in Attachment 2, Slide 7.
    - Discussion: Delete (b) which is repetitive of (a). Subcommission didn't see any substantive difference if you were to use (a) as your guiding principle, or (b) specifically for attempted solicitation and conspiracy to commit murder.

Chairman Quan called for a motion to approve the recommendations to table §§ 13.10 and 13.35, and to amend §§ 13.20, 13.60. Approved without objection.

**C. Subcommission on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval**

Subcommission Chair, Attorney Joseph B. McDonald presented his Subcommission's recommendations. Attorney McDonald's presentation is included here as Attachment 3.

- § 19.70. Stalking. Amend as shown in Attachment 3, Slide 3.
  - Discussion: Strike the term "who" as a grammatical correction. Noted that the *mens rea* of willfully and maliciously was upheld in *People v. Manglona*, 2024 Guam 8.
- § 22.20. Kidnapping; Defined and Punished. No change as shown in Attachment 3, Slide 10.

- § 25.10. Definitions. Add a new definition as shown in Attachment 3, Slide 4.
  - Discussion: Add new subsection (a)(12) to define “cunnilingus.” Attorney Christine Santos Tenorio’s experience that there has been a missing definition in the definitions found in the criminal sexual conduct statute. Recommendation to add the definition cunnilingus based on other MPC statutes. Subcommittee cites *People vs. Legg*, 494 N.W.2d 797, 798 (Mich. Ct. App. 1992).
  
- §§ 25A202 (Possession of Child Pornography), 25A203 (Dissemination of Child Pornography), 25A204 (Production of Child Pornography). No change as shown in Attachment 3, Slide 10.
  
- § 31.65. Curfew Hours for Minors. Repeal as shown in Attachment 3, Slides 6-7.
  - Discussion: Many curfew statutes across the United States have been ruled unconstitutional based on strict scrutiny, freedom of travel, other civil rights, and vagueness. Attorney members on the subcommittee believe this statute would be repealed if it goes up for judicial review. However, GPD member, Sgt. Mike Elliott, was not in favor of a repeal because of law enforcement’s experience with minors out past curfew. Based on the subcommittee’s majority decision, this recommendation to repeal § 31.65 is presented for vote. Mr. Monty McDowell voiced his concerns on problems with drugs and youth out at night would prefer to keep it until our courts rule on it. Attorney Brennan agreed with Monty stated you don’t need a statute to be constitutional to form the basis to approach individuals but would support repeal and would encourage the legislature to replace it. Atty McDonald recognized the value of the statute in allowing charge bargaining but stated the unconstitutionality stares us in the face and our job as lawyers is to point this out and the subcommittee will continue to recommend repeal. Executive Director stated if repeal is recommended, a note can be drafted to reflect this vigorous debate and discussion.
  
- § 31.70. Leaving Children Unattended or Unsupervised in Motor Vehicles; Penalty; Authority of Law Enforcement Officer. Amend (d) as shown in Attachment 3, Slide 5.
  - Discussion: Recommend “knowingly” as the mental state in (d). Consistent with the MPC which provides minimum culpability requirements when there is no mention of the mental state.

- Chapter 89. Crimes Against Minors and Sex Offender Registry. Repeal unimplemented sections as shown in Attachment 3, Slide 8.
  - §89.03. Registration; Duty to Register.
  - §89.06. Failure to Appear for Registration, Absconding and Failure to Register.
  - §89.08. Duties of the Guam Police Department.
  - Discussion: Sections contain unfunded mandates that have not been implemented. Not recommending repeal of CSC laws, more about committees that have not been funded or formed since passage of these laws.
  
- Chapter 93. Criminal Sexual Conduct Assessment and Rehabilitation Act. Repeal as shown in Attachment 3, Slide 8.
  - §93.20. Criminal Sexual Conduct Assessment: Standardized Procedure.
  - §93.30. Assessment Required for Convicted Felons and Criminal Sexual Conduct Offenders.
  - § 93.35. Sentencing of Felons: Parole of Felons: Treatment and Testing Based Upon Assessment Required.
  - §93.50. Report to the Legislature.
  - Discussion: Sections contain unfunded mandates that have not been implemented. Not recommending repeal of CSC laws, more about committees that have not been funded or formed since passage of these laws.

Chairman Quan called for a motion on recommendation to repeal 31.65 subject to inclusion of a comment as suggested by the Executive Director. With one vote in opposition, the motion carried.

Chairman Quan called for a motion to approve the recommendations to amend 19.70 and 31.70; for no change on 22.20, 25A202, 25A203 and 25A204; to add a subsection to 25.10; and to repeal 89.03, 89.06, 89.08, 93.20, 93.30, 93.35 and 93.50. The motion was approved without objection.

**D. Notice of next meeting: Thursday, April 10, 2025, Noon (Tentative)**

Chairman Quan informed Members that the next Plenary meeting is tentatively scheduled for Thursday, April 10, 2025, at 12:00.

**VII. Communications**

None.

**VIII. Public Comment**

None.


**IX. Adjournment**

Chairman Quan adjourned the meeting without objection.

Respectfully submitted this 29<sup>th</sup> day of May, 2025.

  
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Andrew G. Quenga, Executive Director

As set out above, the minutes of the February 6, 2025, meeting were approved by the CLRC at the May 29, 2025, meeting.

  
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Magistrate Judge Jonathan R. Quan, Chairman

Date: 5/29/25

ATTACHMENT 1

SUBCOMMISSION ON DRUGS & OTHER  
CRIMINAL OFFENSES

PRESENTATION

FEB 6, 2025



## REPORT OF THE SUBCOMMISSION ON DRUGS AND OTHER CRIMINAL OFFENSES

February 6, 2025

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

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

Slide 1



### § 67.401.1. Possession, Etc. for Illegal Delivery, Dispensing or Manufacturing; Defined; Punishments Classified According to Drug Class Involved. – **NO CHANGE**

**§ 67.401.1. Possession, Etc. for Illegal Delivery, Dispensing or Manufacturing; Defined; Punishments Classified According to Drug Class Involved.**

- (a) Except as authorized by this Act, it shall be unlawful for any person knowingly or intentionally:
- (1) to manufacture, deliver or possess with intent to manufacture, deliver or dispense a controlled substance; or
  - (2) to manufacture, or deliver, or possess with intent to manufacture or deliver, a controlled substance that, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or a likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who manufactured, distributed or dispensed the substance.
- (b) Any person who violates Subsection (a) with respect to:
- (1) a substance classified in Schedule I, II or III shall be guilty of a felony of the first degree and shall not be eligible for work release or educational programs outside the confines of prison.
  - (2) a substance classified in Schedule IV or V shall be guilty of a felony of the second degree, provided that any person convicted under this Subsection receiving a term of imprisonment shall not be eligible for work release or educational programs outside the confines of prison.

Slide 2



### § 67.401.2. Illegal Possession; Defined and Punishment. – **NO CHANGE**

**§ 67.401.2. Illegal Possession; Defined and Punishment.**

- (a) It is unlawful for any person knowingly or intentionally to possess a controlled substance, unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Act.
- (b) Any person who violates Subsection (a) with respect to any controlled substance shall be guilty of a felony of the third degree.
- (c) A person who commits a crime under 9 GCA §§ 67.401.2(b)(2) or (3) within the Drug-Free School Zone shall be guilty of a misdemeanor.
- (d) A person who commits a crime under §§ 67.401.1 or 67.401.2(b)(1) within the Drug-Free School Zone shall be guilty of the same class of felony had the offense been committed outside the Drug-Free School Zone.
- (e) A person who knowingly fails to report any violation of this Chapter within the Drug Free-School Zone is guilty of a misdemeanor.

Slide 3



### **Recommendation: Move to Chapter 61 or 70**

- § 67.401.2.1. Inhalants.
- § 67.401.2.2. List of Known Inhalants with Potential for Abuse.
- Rationale: Substances used as inhalants often are not controlled substances, so should not be codified in Chapter 67
- Recommendation: Move to Chapter 67 (§ 61.25. Public Drunkenness) or Chapter 70 (Miscellaneous Crimes)
- Note: Offenses have not been prosecuted; List of Inhalants mandated by § 67.401.2.2 is outdated

Slide 4



### § 67.401.2.1. Inhalants.

- (a) Use of Inhalants. It is **unlawful for a person to inhale, ingest, apply or smell the gases, vapors or fumes of an aerosol spray product, volatile chemical, substance or other inhalant, that is not used pursuant to the instructions or prescription** of a licensed health care provider, or that is not used pursuant to the manufacturer's label instructions, for the purpose of becoming under the influence of such substance, causing intoxication, euphoria, inebriation, stupefaction or the dulling of that person's brain or nervous system.
- (b) It is **unlawful for a person to possess** any gas, hazardous inhalant, aerosol spray product, substance containing a volatile chemical or substance containing a chemical material capable of releasing toxic vapors **with the intent to violate the above.**
- (c) Nothing in this Section applies to the inhalation of a prescription or over-the-counter product for medical or dental purposes, or the inhalation of the vapors or fumes of an alcoholic beverage, the sale and consumption of which is authorized by law.
- (d) Proof that a person intentionally or knowingly inhaled, ingested, applied or used a substance in a manner contrary to the directions for use, cautions or warnings on a label of a container of the substance gives rise to a presumption that the person violated Subsection (a).
- (e) For purposes of this Section, it is presumed that the ingredients in a container are, in fact, the ingredients listed on the label of the container or the ingredients listed for that substance in databases maintained or relied upon by a poison control center certified by a national association of poison control centers.

Slide 5



### § 67.401.2.1. Inhalants.

- (f) **A person who violates this Section commits a petty misdemeanor.** A person who violates Subsections (h), (i) or (j) of this Section commits a petty misdemeanor for the first offense and a misdemeanor for subsequent offenses.
- (g) A juvenile court may require a minor found in violation of this Section be provided with treatment and counseling.
- (h) It is a petty misdemeanor for **any person or business to sell, or transfer butane gas or butane lighters or butane in any other form to any person under the age of eighteen (18).**
- (i) It is a petty misdemeanor for **any person or business to sell or transfer propane gas to any person under the age of eighteen (18).**
- (j) It is a petty misdemeanor for **any person or business to sell or transfer substances on the List of Known Inhalants with Potential for Abuse, as defined in § 67.401.2.2 (a) and (b) of this Chapter, to any person under the age of eighteen (18).** This Subsection shall not apply to prescription or over-the-counter medication.
- (k) It is **not unlawful** to transfer inhalants to persons under the age of eighteen (18) provided that the **minor's use of such inhalants is consistent with the product's labeling and is supervised by an adult over the age of eighteen (18).**

Slide 6



### § 67.401.2.2. List of Known Inhalants with Potential for Abuse.

- (a) The Guam Behavioral Health and Wellness Center shall maintain a "List of Known Inhalants with Potential for Abuse." Such list shall contain all known substances with the potential for abuse as defined in § 67.401.2.1 of this Chapter. The list shall be:
  - (1) reviewed and **updated at least once annually;**
  - (2) maintained on the Internet; and
  - (3) distributed to island retailers and all public and private schools as the list is updated.
- (b) Butane and propane shall be on the "List of Known Inhalants with Potential for Abuse."
- (c) The **Department shall, by Administrative Rules and Regulations, develop the procedures by which Inhalants are added to the List of Known Inhalants with Potential for Abuse.**
- (d) All additions to the "List of Known Inhalants with Potential for Abuse" shall require the approval of *I Maga'håga/Maga'låhi.*
- (e) **Penalties** contained in § 67.401.2.1(j) **shall not apply until such substance has been on the "List of Known Inhalants with Potential for Abuse" for a period of not less than six (6) months.**

Slide 7



**Department of MENTAL HEALTH & SUBSTANCE ABUSE**  
Guam, Micronesia

**Official List of Known Inhalants with Potential Abuse**

In accordance with Public Law 28-25, *Relative to Regulating the Sale of Butane, Propane and Other Inhalants to Minors*, the Department of Mental Health and Substance Abuse shall maintain a *List of Known Inhalants with Potential for Abuse*. Furthermore, Public Law 28-25 states that it is a petty misdemeanor for any person or business to sell or transfer substances on the *List of Known Inhalants with Potential for Abuse* to any person under the age of eighteen (18).

The following is the *Official List of Known Inhalants with Potential Abuse* as required by Public Law 28-25 Section 67.401.2.1 of Chapter 67 of Title 9 Guam Code Annotated:

- Butane**
  - Butane Lighters
  - Butane Refills
- Propane**
  - Propane Refills
  - Propane Torch

The products listed are considered harmful and may cause severe, long term damages to the brain, liver and kidneys or Sudden Sniffing Death Syndrome.

Public Law 28-25 Section 67.401.2.1, Paragraph (j) and (l). It is a petty misdemeanor for any person or business to sell, or transfer propane gas, butane gas or butane lighters or butane in any other form to any person under the age of eighteen (18).

**WARNING:**

**IT IS ILLEGAL TO SELL BUTANE AND PROPANE,**

**IN ANY FORM,**

**TO ANY PERSON UNDER THE AGE OF EIGHTEEN (18)**

Additional information about Inhalants and this List can be found on the Department of Mental Health & Substance Abuse Websites:  
[www.psacguam.org](http://www.psacguam.org) and [www.healthychoiceguam.org](http://www.healthychoiceguam.org).

Slide 8



### § 67.401.2.3. Pseudoephedrine: Retail Sale. – **NO CHANGE**

#### § 67.401.2.3. Pseudoephedrine: Retail Sale.

The dispensing, sale, or distribution at retail of pseudoephedrine, or any derivative of pseudoephedrine, shall be subject to the following requirements:

(a) Any medication containing pseudoephedrine, or any derivative of pseudoephedrine, shall be placed behind the sales counter, stored or displayed in a locked cabinet or locked area in such a manner that the product is accessible to the public only with the assistance of a pharmacist, retailer or employee of the retailer;

(b) The dispensing, sale, or distribution at retail outlets of pseudoephedrine, or any derivative of pseudoephedrine, shall be made only by a practitioner, retailer, or employee of a retailer who shall at all times act to prevent the theft or diversion of the product;

(c) A pharmacy or retail distributor shall provide notification in a clear and conspicuous manner in a location where a pseudoephedrine product is offered for sale stating the following: Guam law prohibits the over-the-counter purchase of more than two (2) packages of a product containing pseudoephedrine in a single transaction;

(d) It is unlawful for a practitioner, retailer, or employee of a retailer to sell in a single transaction medicines containing pseudoephedrine in excess of two packages;

(e) It is unlawful for any person to purchase package(s) containing pseudoephedrine with knowledge, intention, or with reckless disregard of the likely use of such package or packages to manufacture methamphetamine;

(f) Any practitioner, retailer, or employee with knowledge of a purchase or sale of package(s) containing pseudoephedrine in violation of this section shall report said transaction to the Guam Police Department or the Department of Public Health and Social Services.

(g) Any practitioner, retailer, employee of a retailer or purchaser who violates items (a), (b), (c), (d), (e) or (f) of this Section commits a violation; and

(h) This section shall not apply to the following:

(1) Any product in liquid, liquid capsule, or dissolvable strip form in which pseudoephedrine, or any derivative of pseudoephedrine, is the active ingredient; or

(2) If possession is by a person authorized by law to dispense, prescribe, manufacture, or possess pseudoephedrine.

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### § 67.401.3. Penalties in Addition to Any Civil Penalties. – **NO CHANGE**

#### § 67.401.3. Penalties in Addition to Any Civil Penalties.

Penalties imposed for violation of this Act and civil remedies provided under this Act are in addition to, and not in lieu of, any civil remedy, administrative penalty or sanction otherwise authorized by law.

Slide 10



### Additional research needed to determine changes/trends in federal and other state law

- § 67.401.4. Prison Terms for Drug Offenders.
- § 67.401.5. Fines for Drug Offenses.
- § 67.401.6. Additional Fines in Drug Offenses.
- § 67.401.9. Importation and Exportation Penalties.
- Rationale: Uniform Controlled Substances Act enacted in 1998; consider progress in treatment and changes in laws
- Recommendation: Conduct additional research and seek input from partners

Slide 11



### § 67.401.7. Information for Sentencing. – **NO CHANGE**

#### § 67.401.7. Information for Sentencing.

Except as otherwise provided in Chapter 80 of Title 9 of the Guam Code Annotated, no limitation shall be placed in 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 Act.

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## § 67.401.8. Establishing Previous Convictions.

– **NO CHANGE**

### § 67.401.8. Establishing Previous Convictions.

(a) [No text]

(1) No person who stands convicted of an offense under §§ 67.401.1 - 67.401.3 or §§ 67.402 - 67.408 or §§ 67.410 - 67.412 of this Act shall be sentenced to increased punishment by reason of one (1) or more prior convictions unless, before trial or before entry of a plea of guilty, the Attorney General files an information with the Court, and serves a copy of such information on the person or counsel for the person, stating the previous conviction to be relied upon. Upon a showing by the Attorney General that facts regarding prior convictions could not by due diligence be obtained prior to trial or before entry of a plea of guilty, the Court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this Section if the increased punishment which may be imposed is imprisonment for a term of excess of three (3) years, unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) If the Attorney General files an information under this Section, the Court shall after conviction, but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attach the sentence.

(c) [No text]

(1) If the person denies any allegation of the information of prior conviction or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the Attorney General. The Court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the Attorney General to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by § 67.401.8(a)(1). The hearing shall be before the Court without a jury and either party may introduce evidence. Except as otherwise provided in § 67.401.8(c)(2), the Attorney General shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the Court shall enter findings of fact and conclusions of law.

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## § 67.401.8. Establishing Previous Convictions.

– **NO CHANGE**

(2) A person claiming that a conviction alleged in the information was obtained in violation of applicable provisions of the Constitution of the United States or the Organic Act of Guam shall set forth his claim and the factual basis therefore with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction not raised by response to the information before an increased sentence is imposed in reliance thereon shall be waived, unless good cause be shown for failure to make a timely challenge.

(d) [No text]

(1) If the person files no response to the information or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the Court shall proceed to impose sentence.

(2) If the Court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as matter of law, the Court shall, at the request of the Attorney General, postpone sentence to allow an appeal from that determination. If no such request is made, the Court shall impose sentence. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) No person who stands convicted of an offense under §§ 67.401.1 - 67.401.3 or §§ 67.402 - 67.408 or §§ 67.410 - 67.412 of this Act may challenge the validity of any prior conviction alleged under this Section which occurred more than five (5) years before the date of the information alleging such prior conviction.

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## Additional research needed to determine changes/trends in federal and other state law

### § 67.401.9. Importation and Exportation Penalties.

(a) Any person who:

(1) contrary to §§ 67.601 or 67.602 of this Act, knowingly or intentionally imports or exports a controlled substance; or

(2) contrary to § 67.604 of this Act, knowingly or intentionally brings or possesses on board a vessel or aircraft a controlled substance; or

(3) contrary to § 67.608 of this Act, manufacturers who distribute a controlled substance shall be punished as provided in § 67.401.9(b).

(b) [No text]

(1) In the case of an offense under Subsection (a) of this Section involving a controlled substance listed in Schedules I, II, III, IV or V of this Act which is a narcotic, the person guilty of such an offense shall be imprisoned not less than twenty (20) years nor more than thirty (30) years, and may, in addition, be fined not more than Fifty Thousand Dollars (\$50,000). The sentence shall include a special parole term of not less than three (3) years, in addition to such terms of imprisonment.

(2) If he is guilty of an offense under Subsection (a) of this Section, and if he has been convicted on one (1) or more felonies under any provision of this Act, any law of the United States relating to controlled substances, or for any offense under state or foreign law relating to narcotic drugs listed in Schedule I as per Appendix A of this Act, or Schedule II as per Appendix B of this Act, which offense would be a felony under this Act, and one (1) or more of the convictions are final, he shall be sentenced to a term of life imprisonment without the possibility of parole, and may, in addition, be fined not more than One Hundred Thousand Dollars (\$100,000).

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(3) In the case of an offense under Subsection (a) of this Section with respect to a controlled substance other than a narcotic drug listed in Schedules I, II, III, IV or V of this Act, the person guilty of such offense shall be imprisoned for not less than three (3) years nor more than ten (10) years, and may, in addition, be fined not more than Fifteen Thousand Dollars (\$15,000). The sentence shall, in addition to such term of imprisonment, include:

(A) a special parole term of not less than two (2) years if such controlled substance is listed in Schedules I, II or III of this Act; or

(B) a special parole term of not less than one (1) year if such controlled substance is listed in Schedule IV of this Act.

(c) The minimum term of imprisonment prescribed by Subsection (b)(1) of this Section shall not apply in the case of a person whom the Court determines violated Subsection (a)(1) of this Section for the primary purpose of enabling him to obtain a narcotic drug which he requires for his personal use because of his addiction to such drug. The Court shall take into consideration the amount of the controlled substance imported in determining if the offender's primary purpose is importation or exportation for his own use.

(d) In the case of any sentence under this Section, imposition or execution of such sentence shall not be suspended and probation shall not be granted nor shall parole or work release be granted until the person has served the minimum term of imprisonment.

(e) Sentences in these cases shall also include mandatory participation in a drug rehabilitation program at the Department of Corrections.

(f) A special parole term imposed under this Section or § 67.411 of this Act may be revoked if its terms and conditions are violated. In such circumstances, the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. The special term provided for in this Section and in § 67.411 of this Act is in addition to and not in lieu of any other parole provided for by law.

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ATTACHMENT 2

SUBCOMMISSION ON CRIMES RELATING  
TO PROPERTY

PRESENTATION

FEB 6, 2025



## Report of the Subcommittee on Crimes Relating to Property

February 6, 2025

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

Members: Atty Phillip J. Tydingco (Chair),  
Atty F. Randall Cunliffe, Mr. Monty McDowell, Atty William B. Brennan

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### Preliminary Review Completed (by Chapter)

- 9 GCA Chapter 32 (Financial Exploitation of Elderly)
- 9 GCA Chapter 34 (Arson, Negligent Burning, Criminal Mischief)
- 9 GCA Chapter 37 (Burglary)
- 9 GCA Chapter 40 (Robbery)
- 9 GCA Chapter 43 (Theft and Related Offenses)
- 9 GCA Chapter 46 (Forgery, Fraudulent Practices & Telephone Records)
- 9 GCA Chapter 47 (Trademark Counterfeiting Act)
- 9 GCA Chapter 48 (Notification of Breaches of Personal Information)
- 9 GCA Chapter 70 (Miscellaneous Crimes)
- 10 GCA Chapter 60 (Firearms)
- 9 GCA Chapter 69 (Antitrust Law)
- 9 GCA Chapter 13 (Attempt, Solicitation, Conspiracy)

### Chapters Remaining

- None

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## Items for Today

- 9 GCA Chapter 13

***\*The Subcommittee thanks Attorney Gordon Anderson for his work and comprehensive review of Guam Supreme and Superior Court cases concerning this Chapter.***

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## 9 GCA § 13.10

“A person is guilty of an attempt to commit a crime when, with intent to engage in conduct which would constitute such crime were the circumstances as he believes them to be, he performs or omits to perform an act which constitutes a substantial step toward commission of the crime.”

In *People v. Tedtaotao*, 2015 Guam 31, the Guam Supreme Court held that “attempted *reckless* murder” is not a cognizable offense because one cannot attempt (with intent) to commit a reckless act.

The Subcommittee was split on whether a note should be added to the statute referring to Tedtaotao.

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## 9 GCA § 13.35

"If a person conspires to commit a number of crimes, he may be convicted of only one conspiracy so long as those multiple crimes are the object of the same agreement or continuous conspiratorial relationship."

Superior Court decisions currently conflict, with CF0311-20 *People v. Topasna*, Dec. & Order (Jan. 26, 2022) (J. Barcinas) (granting defendant's pretrial motion to dismiss conspiracy counts because the court found "it difficult to see how [the facts highlighted] would support the commission of two separate conspiracies") and CF0330-17 *People v. Santos*, Dec. & Order (Jan. 2, 2018) (J. Bordallo) (denying pretrial motion to dismiss and declining to order the Government to elect which conspiracy to bring to trial, finding Government may *charge* multiple lesser included conspiracies in an Indictment).

The Subcommittee was undecided on whether to address any change in the statute given the conflict, or allow parties to continue to litigate this issue until the Guam Supreme Court decides whether a pre trial election by the Government is required.

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## 9 GCA § 13.20

A person is guilty of solicitation to commit a ~~felony~~ crime when with intent to promote or facilitate its commission he commands, encourages or requests another person to perform or omit to perform an act which constitutes such crime or an attempt to commit such crime or would establish his complicity in its commission or attempted commission.

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## 9 GCA § 13.60

(a) Except as otherwise provided in this Section attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious crime which is attempted or solicited or is an object of the conspiracy.

~~(b) Attempted murder, and solicitation and conspiracy to commit murder are felonies of the first degree.~~

~~(c)~~(b) A conspiracy to commit a misdemeanor involving danger to the person or to commit a series or number of misdemeanors pursuant to a common scheme or plan is a felony of the third degree.

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ATTACHMENT 3

SUBCOMMISSION ON CRIMES AGAINST  
PERSONS

PRESENTATION

FEB 6, 2025



## Report of the Subcommittee on Crimes Against Persons

February 6, 2025

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

Members: Atty Joseph B. McDonald (Chair); Sgt. Michael Elliott; Atty John Morrison;  
Atty Christine Tenorio; Magistrate Judge Sean E. Brown

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CRIMES AGAINST PERSONS  
SUBCOMMISSION RECOMMENDATION ON DEFERRED SECTIONS

## RECOMMENDED AMENDMENTS

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## 9 GCA § 19.70 Stalking

A person is guilty of simple stalking if he or she willfully, maliciously, and repeatedly, follows or harasses another person or ~~who~~ makes a credible threat with intent to place that person or a member of his or her immediate family in fear of death or bodily injury.

- Use of common law *mens rea* upheld in P v. Manglona, 2024 Guam 8.
- Corrective amendment for proper grammar.

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## 9 GCA § 25.10 Definitions

New subparagraph (a) (12)

“Cunnilingus” is the touching of the urethral opening, vaginal opening, or labia with the actor’s mouth.

*People v. Legg*, 494 N.W.2d 797, 798 (Mich. Ct. App. 1992).

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## 9 GCA § 31.70 (d)

Any person who knowingly violates Subsection (a) and in so doing causes serious bodily injury, permanent disability, or permanent disfigurement to a child commits a felony of the third degree.

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CRIMES AGAINST PERSONS  
SUBCOMMISSION RECOMMENDATION ON DEFERRED SECTIONS

**RECOMMENDED REPEAL**

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## 9 GCA § 31.65 Curfew Hours for Minors

### (b) Offenses.

- (1) A minor commits an offense *if* he remains in any public place *or* on the premises of any establishment on Guam during curfew hours.
- (2) A parent *or* guardian of a minor commits an offense if he knowingly permits, *or* by insufficient control allows, the minor to remain in any public place *or* on the premises of any establishment on Guam during curfew hours.
- (3) The owner, operator, *or* any employee of an establishment commits an offense *if* he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

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## UNIMPLEMENTED SECTIONS

Ch. 89 Crimes Against Minors and Sex Offender Registry §§ 89.03, 89.06, 89.08

Ch. 93 Criminal Sexual Conduct Assessment and Rehabilitation Act §§ 93.20, 93.30, 93.35, 93.50

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CRIMES AGAINST PERSONS  
SUBCOMMISSION RECOMMENDATION ON DEFERRED SECTIONS

**NO CHANGES RECOMMENDED**

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**NO RECOMMENDED AMENDMENT  
OR REPEAL**

Child Pornography §§ 25A202, 25A303, 25A204

Kidnapping § 22.20

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