



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, JULY 31, 2025 MINUTES

I. CALL TO ORDER

The meeting was called to order by Chair Jonathan Quan at 12:07 PM.

II. PROOF OF DUE NOTICE OF MEETING

The Chair confirmed due notice of the meeting and established quorum. The meeting was held in person and via Zoom and livestreamed on the Judiciary of Guam's YouTube channel.

III. DETERMINATION OF QUORUM

Roll call was conducted by Administrative Assistant Lisa Ibanez. Nine members were confirmed present, establishing a quorum.

Hon. Jonathan R. Quan, Present, Judiciary of Guam
Hon. Maria T. Cenzon, (No response during roll call)
Hon. Anita A. Sukola, (No response during roll call)
Atty. William Bucky Brennan, Present on Zoom, Hagåtña
DOC Director Designee Maj. Antone Aguon, (later logged on via Zoom)
Chief of Police Designee Sgt. Michael Elliott, Present on Zoom, Tiyan
Atty Joseph B McDonald, Present on Zoom, Sinajaña
Atty. F. Randall Cunliffe, Present on Zoom, Hagåtña
Mr. Monty McDowell, Present, Judiciary of Guam
Public Defender Designee Dep. Dir. John Morrison, Present on Zoom, Sinajaña
Attorney General Designee AAG Emily Rees, 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, Judiciary of Guam
Chairman Quan acknowledged a quorum present.

IV. DISPOSAL OF MINUTES: May 29, 2025

The minutes of the May 29, 2025, plenary meeting were approved without objection.

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

V. OLD BUSINESS

Subcommission Status Update and Report of the Executive Director.

Director Quenga provided an informational report.

- The CLRC's Interim Report to *I Liheslaturan Guðhan*, approved at the plenary meeting of May 29, 2025, was transmitted to the Legislature, Governor, Chief Justice, and other stakeholders on June 13, 2025.
- The Commission's second quarterly report was issued on July 11, 2025, and posted online on the CLRC website.
- Research Attorney Andrew Strege was introduced and welcomed.

VI. NEW BUSINESS

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

Tabled by Chairman.

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

Tabled by Chairman.

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

Executive Director Quenga presented on behalf of Subcommission Chair Judge Sukola. His PowerPoint presentation is included as Attachment 1.

- 9 GCA Chapter 7. Exemptions and Defenses.
 - § 7.10. Exemption from Criminal Liability Due to Juvenile Status. Amend as shown in Attachment 1, Slide 3.
 - Discussion: Non-substantive amendments for consistency with the Family Court Act (19 GCA § 5102).
 - § 7.16. Defense Mental Disease or Defect. No change as shown in Attachment 1, Slide 4.
 - § 7.19. Same: Admissibility of Evidence Showing. Amend as shown in Attachment 1, Slide 4.
 - Discussion: Non-substantive amendment to title.
 - § 7.22. Same: Procedure for Assertion of. Amend as shown in Attachment 1, Slide 5.
 - Discussion: Non-substantive amendment to title. Amend as shown in Attachment 1, Slide 6.
 - § 7.25. Psychiatric or Psychological Examination and Procedure.

- Discussion: Tabled.
- § 7.28. Acquittal: Order for Civil Commitment. No change.
- § 7.31. Acquittal: Verdict Must State Reason as Mental Disease Defect. Amend as shown in Attachment 1, Slide 6.
 - Discussion: Discussion: Non-substantive amendment to title.
- § 7.34. Acquittal: Court Order of Commitment or Release; Petition for Discharge.
 - Discussion: Tabled.
- § 7.37. Mental Disease: a Bar to Proceeding or Sentence. Amend as shown in Attachment 1, Slide 7.
 - Discussion: Recommendation to correct typographical error.
- § 7.40. Same: Hearing to Determine. Amend as shown in Attachment 1, Slide 8.
 - Discussion: Non-substantive amendment to title.
- § 7.43. Same: Hearing Procedure for Commitment and Release. Amend as shown in Attachment 1, Slide 9.
 - Discussion: Non-substantive amendment to title. Recommendation to Subsection (a) amendments for consistency with amendments to § 7.25. and subsection (e) amendments for clarification.
- § 7.46. Same: Mental Disease: Commitment as Exonerating Bail. Amend as shown in Attachment 1, Slide 10.
 - Discussion: Non-substantive amendment to title. Other amendments for clarification.
- § 7.49. Same: Mental Disease: Hearing and Procedure When Mental Disease or Defect Occurs After Sentence. Amend as shown in Attachment 1, Slide 10.
 - Discussion: Non-substantive amendment to title. Other amendments for clarification.
- § 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 as shown in Attachment 1, Slide 12.
 - Discussion: Recommendation to Amend title for clarification and consistency with source MPC § 2.04. Subsection (b)(2)(A) typo correction.
- § 7.58. Intoxication. No change.
- § 7.61. Duress or Necessity. Amend as shown in Attachment 1, Slide 14.
 - Discussion: Recommendation to subsection (b) amend for consistency with “serious bodily injury” in § 7.76.
- § 7.64. Other Defenses. Amend as shown in Attachment 1, Slide 15.
 - Discussion: Recommendation to amend title for clarification and consistency with source MPC § 2.11.

- § 7.67. Appropriateness of Prosecution. Amend as shown in Attachment 1, Slide 16.
 - Discussion: Recommendation to amend title for clarification and consistency with source MPC § 2.12.
- § 7.70. Entrapment as Affirmative Defense. Amend as shown in Attachment 1, Slide 17.
 - Discussion: Recommendation to amend title for clarification and consistency with source MPC § 2.13.
- § 7.73. Specific Defenses Defined and Allowed; Ignorance or Mistake; Intoxication; Duress, Compulsion; Consent; De Minimus Infractions; Entrapment; and Renunciation. Amend as shown in Attachment 1, Slide 18.
 - Discussion: Non-substantive amendment to section title. Section only addresses renunciation. For consistency with source MPC § 5.01(g)(4).

Chairman Quan called for a motion to accept the Subcommittee Crim Pro's submission proposal concerning Chapter 7. Approved without objection.

Sections §§ 7.25 and 7.34 were tabled.

C. Ad Hoc Subcommittee on Corrections-related Chapters: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval.

Executive Director Quenga presented on behalf of the Ad Hoc Subcommittee. His PowerPoint presentation is included as Attachment 2.

- 9 GCA Chapter 80 (Disposition of Offenders) Article 1 (General Provisions)
 - § 80.00. Terms of Imprisonment are Fixed Terms. No change.
 - § 80.10. Types of Sentences Allowed. Amend as shown in Attachment 2, Slide 4.
 - Discussion: Amendments clarify that "civil" commitment may be ordered, separate (a)(6) into different subsections for added clarity, and correct a grammatical error.
 - § 80.12. Presentence Report: Psychiatric Exam: Temporary Imprisonment for Classification. Amend as shown in Attachment 2, Slides 5-7.
 - Discussion: Amendment in subsection (a) clarifies Probation's official name, adds "presentence to subsections (b) and (c) for consistency, adds "psychiatric observation" in subsection (d) for consistency, and correct punctuation and grammatical errors. Possible relocation to Title 8 as this is primarily procedural.
 - § 80.14. Presentence Report: Use Regulated. Amend as shown in Attachment 2, Slide 8.
 - Discussion: Substantive amendment to increase disclosure of the presentence report from 2 to 5 days. For comparison, the subcommittee reviewed similar requirements in other jurisdictions (Attachment 2, Slide 9). Chairman Quan noted the report is normally provided more than 5 days before sentencing, and it is often waived, so it is not a significant issue. Other amendments are for consistency

and clarification. Possible relocation to Title 8 as this is primarily procedural.

- § 80.16. Sentence of Corporation. No change.
- § 80.18. Chapter Not Applicable to Youth Offenders. Amend as shown in Attachment 2, Slide 10.
 - Discussion: Amendment for clarification.
- § 80.20. Civil Commitments in Lieu of Prosecution in Certain Cases. Amend as shown in Attachment 2, Slide 10.
 - Discussion: Amendment in subsection (a) for clarification.
- § 80.22. Reduction by Court of Degree of Offense. No change.
- 9 GCA Chapter 80. Article 7 (Hormone or Anti-Androgen Pilot Treatment Program for Convicted Sex Offenders). Repeal Article 7 in its entirety as shown in Attachment 2, Slide 11.
 - Discussion: Recommendation by the Parole Services Division of the Department of Corrections to repeal this Article 7 in its entirety. This pilot program was created by the Legislature in 2015 with a trial period of 48 months after implementation. No rules were ever promulgated for this program and it was never implemented.

Chairman Quan called for a motion to approve Ad Hoc Subcommissions recommendations for Chapter 80, Article 1 and Article 7. Approved without objection.

- Discussion of 9 GCA § 80.38 (informational).

Research Attorney Gordon Anderson presented research on the unconstitutionality of § 80.38. His PowerPoint presentation is included in Attachment 3, Slides 1-12.

Extended-term sentencing statute § 80.38 (and by implication §§ 80.40 and 80.42) was ruled unconstitutional by the Guam Supreme Court in *People v. Muritok* (2003 Guam 21) for violating the U.S. Supreme Court's *Apprendi* rule that only juries—not judges—may make factual findings that increase a sentence beyond the statutory maximum. Ad Hoc is considering whether the statute can be fixed. He outlined possible legislative fixes: (1) substituting “jury” for “court” in the statutes; (2) adopting the Hawaii extended-term law requiring facts to be proven by a jury; or (3) restructuring along Oregon’s model, with bifurcated trials and explicit waiver options. He also noted comparative approaches in other jurisdictions and emphasized further research before recommendations are finalized. Input from other subcommissions was invited in discussions to continue on this issue.

E. Notice of next meeting: Thursday, September 25, 2025, Noon (Tentative)

VII. Communications

None.

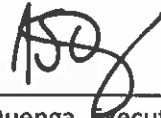
VIII. Public Comment

Associate Justice F. Philip Carbullido thanked the Chairman, Executive Director and all Commission members for their efforts and expressed confidence that the project will bring significant benefits to Guam's legal community, the courts, and the broader island community.

IX. Adjournment


Chairman Quan adjourned the meeting without objection.

Respectfully submitted this 8th day of October, 2025.



Andrew S. Quenga, Executive Director

As set out above, the minutes of the July 31, 2025 plenary meeting were approved by the CLRC at the October 8, 2025 plenary meeting.



Magistrate Judge Jonathan R. Quan, Chairman

Date: 10/8/25

ATTACHMENT 1

SUBCOMMISSION ON CRIMINAL
PROCEDURE

PRESENTATION

JULY 31, 2025



Report of the Subcommittee on Criminal Procedure

July 31, 2025

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

Members: Hon. Anita A. Sukola (Chair); AAG Emily Rees; Executive Director
Serge Quenga (ex-officio)

Slide 1



Presented Today

9 Guam Code Annotated

Chapter 7 – Exemptions and Defenses

Slide 2



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 has not made an order directing that he be prosecuted under general law.

CRIM PRO COMMENT: Reviewed 6/13/24. Non-substantive amendments for consistency with the Family Court Act (19 GCA § 5102).

Slide 3



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.

CRIM PRO COMMENT: No change.

§ 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.

CRIM PRO COMMENT: Reviewed 6/13/24. Non-substantive amendment to title.

Slide 4



§ 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 provided 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 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.

CRIM PRO COMMENT: Reviewed 6/13/24. Non-substantive amendment to title.



§ 7.25. **Psychiatric or Psychological Examination and Procedure.** [Tabled 6/13/24]

§ 7.28. **Acquittal: Order for Civil Commitment.**

In any case in which evidence of mental illness, disease or defect has been introduced pursuant to the provisions of § 7.19 and in which the defendant is acquitted, the court may order an evaluation of his condition and initiation of proceedings pursuant to the provisions of 10 GCA Chapter 82.

CRIM PRO COMMENT: Reviewed 6/13/24. No change.

§ 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.

CRIM PRO COMMENT: Reviewed 6/13/24. Non-substantive amendment to title.

§ 7.34. **Acquittal: Court Order of Commitment or Release; Petition for Discharge.** [Tabled 6/13/24]



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

CRIM PRO COMMENT: Typo correction.



§ 7.40. **Same: Mental Disease; 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.

CRIM PRO COMMENT: Reviewed 6/13/24. Non-substantive amendment to title.



§ 7.43. Same: Mental Disease; Hearing Procedure for Commitment and Release.

(a) If at least one qualified psychiatrist, licensed psychologist or other qualified person 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.

....

(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 8 GCA § 40.10 et seq, Chapter 40 (commencing with § 40.10 et seq) of the Criminal Procedure Code.

....

CRIM PRO COMMENT: Reviewed 6/13/24. Non-substantive amendment to title. Subsection (a) amendments for consistency with amendments to § 7.25. Subsection (e) amendments for clarification.

Slide 9



§ 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 § 40.10 et seq, 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.

CRIM PRO COMMENT: Reviewed 6/13/24. Non-substantive amendment to title. Other amendments for 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 (c) and (d) of § 7.34(c) and (d). The court shall conduct a hearing on such application in the manner provided by Subsection (c) of § 7.34(c) and make such order releasing the person or returning him to probation, parole or custody of the Director of Corrections as may be required.

CRIM PRO COMMENT: Reviewed 6/13/24. Non-substantive amendment to title. Other amendments for clarification.

Slide 10



§ 7.52. Transfer of Committed Person Off-Island; Hearing and Notice to Attorney General Required.

Nothing in this Article shall be construed to hinder or to prevent the transfer of any person committed pursuant to this article to any hospital outside of Guam, for care and treatment. An application for transfer may be made by either the Administrator of the Guam Memorial Hospital or by or on behalf of the person committed. The application shall be made to the court which committed such person. A transfer may be made only upon court order after such notice to the Attorney General as the court shall require.

CRIM PRO COMMENT: Reviewed 6/13/24. No change.

Slide 11



**ARTICLE 3
DEFENSES**

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

(a) A person's ignorance or mistake as to a matter of fact or law is a defense if it negates 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 acts 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

...

CRIM PRO COMMENT: Amendment to title for clarification and consistency with source MPC § 2.04. Subsection (b)(2)(A) typo correction.

Slide 12



§ 7.58. Intoxication.

- (a) As used in this Section:
- (1) *intoxication* means an impairment of mental or physical capacities resulting from the introduction of alcohol, drugs or other substances into the body.
 - (2) *self-induced intoxication* means intoxication caused by substances which the person knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would otherwise afford a defense to a charge of crime.
- (b) Except as provided in Subsection (d), intoxication is not a defense to a criminal charge. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.
- (c) A person is reckless with respect to an element of the offense, even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.
- (d) Intoxication which is not self-induced is an affirmative defense if, by reason of such intoxication, the person at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of the law.

CRIM PRO COMMENT: No change.

Slide 13



§ 7.61. Duress or Necessity.

- (a) In a prosecution for any offense it is an affirmative defense that the defendant engaged in the conduct otherwise constituting the offense:
- (1) because he was coerced into doing so by the threatened use of unlawful force against his person or the person of another in circumstances where a person of reasonable firmness in his situation would not have done otherwise; or
 - (2) in order to avoid death or ~~great~~ **serious** bodily ~~harm~~ **injury** to himself or another in circumstances where a person of reasonable firmness in his situation would not have done otherwise.
- (b) The defenses defined in this Section are not available if the offense is murder nor to a person who placed himself intentionally, knowingly or recklessly in a situation in which it was probably that he would be subjected to duress or compulsion.

CRIM PRO COMMENT: Subsection (b) amendments for consistency with "serious bodily injury" in § 7.76.

Slide 14



§ 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.

CRIM PRO COMMENT: Amendment to title for clarification and consistency with source MPC § 2.11.

Slide 15



§ 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.

CRIM PRO COMMENT: Amendment to title for clarification and consistency with source MPC § 2.12.

Slide 16



§ 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.

CRIM PRO COMMENT: Amendment to title for clarification and consistency with source MPC § 2.13.

Slide 17



§ 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:
 - (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.

CRIM PRO COMMENT: Non-substantive amendment to section title. Section only addresses renunciation. For consistency with source MPC § 5.01(4).

Slide 18

ATTACHMENT 2

AD HOC SUBCOMMISSION ON
CORRECTIONS-RELATED CHAPTERS

PRESENTATION

JULY 31, 2025



Report of the Ad Hoc Subcommittee on Corrections-related Chapters

July 31, 2025

Discussion of Chapters and Presentation of Recommendations for Discussion and Approval

Members: Atty Kristina Baird; Atty Mary Hill; Chief Parole Officer Michael P. Quinata; Chief Probation Officer Rossanna Villagomez-Aguon; Probation Officer Supervisor Jeremiah J.A. Cruz; Marshal Kennedy G. Robinson; Marshal Dodd Siegfred V. Mortera, Jr.

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Presented Today 9 GCA Chapter 80 Disposition of Offenders

- Article 1. General Provisions (Recommendations for approval)
- Article 7. Hormone or Anti-Androgen Pilot Treatment Program for Convicted Sex Offenders (Recommendations for approval)
- Article 2. Imprisonment (Discussion)

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Article 1 – General Provisions

No Changes to

- § 80.00. Terms of Imprisonment are Fixed Terms.
- § 80.16. Sentence of Corporation.
- § 80.22. Reduction by Court of Degree of Offense.

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Article 1 General Provisions

§ 80.10. Types of Sentences Allowed.

(a) Unless otherwise provided by law, the court may suspend the imposition of sentence of a person who has been convicted of a crime in accordance with § 80.60, may order him to be civilly committed in lieu of sentence in accordance with § 80.20, or may sentence him as follows:

- (1) to imprisonment for a term required by law;
- ...
- (5) to be placed on probation as authorized by law; ~~or~~
- (6) to pay a fine, to make restitution and to be placed on probation; ~~or~~
- (7) to make restitution and imprisonment; ~~or~~
- (8) to pay a fine and imprisonment.

(b) Where the judgment of conviction included ~~ed~~ more than one crime, the sentences imposed may run concurrently or consecutively except that if such sentences run consecutively, the provisions of §§ 80.38, 80.40 and 80.42 shall not be applicable.

(d) Nothing in this Code deprives the court of any authority otherwise conferred by law to decree ~~for~~ forfeiture of property, suspend or cancel the license, remove a person from office or impose any other civil penalty, such a judgment or order may be included in the sentence.

AD HOC COMMENT: Subsection (a) "civilly" added to reflect § 80.20 (Civil Commitments in Lieu of Prosecution in Certain Cases), Oxford comma added for clarity. Subsection (a)(6) separated for clarity. Subsection (b) grammatical correction; §§ 80.38, 80.40 and 80.42 (highlighted) were found to be unconstitutional under *Muriok* and may have to be stricken (pending more research). Subsection (d) deletion of unnecessary brackets.

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§ 80.12. Presentence Report: Psychiatric Exam: Temporary Imprisonment for Classification.

- (a) The ~~p~~Probation ~~s~~Services ~~D~~ivision of the court shall make a presentence investigation and report to the court before the imposition of sentence unless the court otherwise directs for reasons stated on the record.
- (b) The ~~presentence~~ report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.
- (c) The ~~presentence~~ report of such investigation shall be in writing and so far as practicable shall include
 - (1) an analysis of the circumstances attending the commission of the crime;
 - (2) the offender's history of delinquency or criminality;
 - (3) physical and mental condition;
 - (4) family situation and background;
 - (5) social, economic and educational background;
 - (6) job experience and occupational skills and aptitude and personal habits; and
 - (7) any other matters that the probation officer deems relevant or the court directs to be included.



§ 80.12. [Continued]

- (d) Before making disposition in the case of person convicted of a felony or misdemeanor, the court may order the offender to submit to psychiatric observation or examination.
 - (1) The offender may be committed for this purpose for a period not exceeding twenty (20) days
 - (A) to a facility within or licensed by the Guam Behavioral Health and Wellness Center,
 - or
 - (B) the court may appoint a qualified psychiatrist to make the examination.
 - (2) The report of the ~~psychiatric observation~~ or examination shall be submitted to the court in writing at such time as the court directs.
- (e) If, after presentence investigation, the court desires additional information concerning an offender, it may order that he be committed, for a period not exceeding ninety (90) days, to the custody of the Department of Corrections, for observation and study at an appropriate reception or classification center before making a final disposition in the case.
 - (1) The department shall ~~advise~~ ~~advise~~ the court of its findings and recommendations on or before the expiration of such ninety-day period.
 - (2) If the offender is thereafter sentenced to imprisonment, the period of such commitment for observation shall be deducted from the maximum term of such sentence.



§ 80.12. [Continued]

AD HOC COMMENT: Subsection (a) clarification of Probation's official name. Subsection (b) "presentence" added for consistency. Subsection (c) "presentence" added for consistency; semicolons added for consistency. Subsection (d) "psychiatric observation" added for consistency. Subsection (e)(1) grammatical correction.

Submitted to Crim Pro for consideration whether §§ 80.12 and 80.14 are procedural in form and substance and should be moved to Title 8 (Criminal Procedure Code) Chapter 120 (Judgment and Sentence). Recommend consideration of §§ 120.24 and 120.25, respectively.



§ 80.14. Presentence Report: Use Regulated.

- (a) ~~[No text]~~ ~~(+)~~ The presentence report shall not be a public record. ~~(+)~~ It may be made available only:
 - ~~(A)~~ to the sentencing court;
 - ~~(B)~~ to any reviewing court where relevant to an issue on which an appeal has been taken;
 - ~~(C)~~ to any examining facility, correctional institution, probation or parole department or board for use in the treatment or supervision of the offender, ~~and~~
 - ~~(D)~~ to the parties as provided in this Section.
- (b) At least ~~two~~ ~~(2)~~ ~~five~~ ~~(5)~~ days before imposing sentence the court shall furnish the offender, or his counsel if he is so represented, a copy of the ~~presentence~~ report of the ~~presentence investigation~~ exclusive of any recommendations as to sentence, unless in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the offender or his counsel an opportunity to comment thereon.

...
- (c) ~~[No text]~~ ~~(+)~~ Any copies of the presentence ~~investigation~~ report made available to the offender or his counsel and the attorney for the Government shall be returned to the court immediately following the imposition of sentence.

~~(+)~~ ~~(0)~~ Copies of the presentence ~~investigation~~ report shall not be made by the offender, his counsel or the attorney for the Government.

AD HOC COMMENT: Subsection (a): amendments and renumbering for clarification. Subsection (b): amendment on presentence report for consistency between sections; recommend increasing disclosure from 2 to 5 days. Subsection (c): amendments and renumbering for consistency and clarification. Crim Pro to consider moving this section to Title 8.



Should the disclosure time be increased from two to five days?

- **Federal Rules of Criminal Procedure - Rule 32(c)(2):** 35d unless defendant waives; Rule 32(f)(1): 14d to object after receiving report.
- **CNMI Rules of Criminal Procedure – Rule 32(c)(1):** report to be made before imposition of sentence; (c)(3): disclosure to defendant at a reasonable time before imposing sentence.
- **Cal Penal Code § 1203(b)(2)(E):** [for person convicted of a felony and eligible for probation] report to be made available at least 5d (or 9d upon request by defendant or prosecutor) prior to time fixed by the court for hearing and determination of the report.
- **N.J. Court Rules of Court Rule 3:21-2:** presentence investigation and report to court before imposition of sentence or grant of probation.
- **N.Y. CPL § 390.50(2):** not less than one court day before sentencing.

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§ 80.18. Chapter Not Applicable to Youth Offenders.

Nothing in this Chapter shall affect the power of the court to deal with a youth offender, as defined by § 83.15(d) in the manner provided by § 83.35.

AD HOC COMMENT: Amendment for clarification.

§ 80.20. Civil Commitments in Lieu of Prosecution in Certain Cases.

(a) When a person prosecuted for a felony of the third degree, misdemeanor or petty misdemeanor is found by the court to be a chronic alcoholic, narcotic addict or person suffering from mental abnormality, the court may:

...

AD HOC COMMENT: Subsection (a) amendment for clarification.

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Article 7

Hormone or Anti-Androgen Pilot Treatment Program for Convicted Sex Offenders

~~§ 80.101. Definitions.~~

~~§ 80.102. Hormone or Anti-Androgen Pilot Treatment Program – Establishment, Eligibility.~~

~~§ 80.103. Rules.~~

~~§ 80.104. Costs.~~

~~§ 80.105. Use of Hormone or Anti-Androgen Treatment Program with Persons not Included in Pilot Program; Referrals to the Program.~~

~~§ 80.106. Sunset Provision.~~

AD HOC COMMENT: Parole Services recommends repeal of this Article in its entirety. This pilot program was created by the Legislature in 2015 with a trial period of 48 months after implementation. This program has never implemented.

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ATTACHMENT 3

DISCUSSION OF 9 GCA § 80.38

PRESENTATION

JULY 31, 2025



9 GCA Chapter 80 Article 2 – Imprisonment

Discussion of 9 GCA § 80.38

By
Gordon Anderson

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People v. Muritok and the Extended Term Sentencing Statutes

Ad Hoc Subcommittee
July 31, 2025

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Overview

- Title 9 GCA § 80.38 was held unconstitutional by the Guam Supreme Court in *People v. Muritok*, 2003 Guam 21.
- Title 9 GCA §§ 80.40 and 80.42 appear to have the same defect: the court, rather than the jury, finds certain facts that increase the sentence.
- **Question:** Can these statutes be made constitutional?

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9 GCA § 80.38

§ 80.38. Extended Terms for Felonies: When Allowed: Repeat Offenders.

“The court may sentence a person who has been convicted of a felony to an extended term of imprisonment **if it finds** one or more of the grounds specified in this Section. . . .”

Extended terms may be imposed if *the court* makes the finding.

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MPC § 7.03

§ 7.03. Criteria for Sentence of Extended Term of Imprisonment; Felonies

“The Court may sentence a person who has been convicted of a felony to an extended term of imprisonment **if it finds** one or more of the grounds specified in this Section.

The Model Penal Code uses the same language.

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Similar Sections

§ 80.40. Extended Terms for Felonies: When Allowed: Repeat or Multiple Offenders.

“The court may sentence a person who has been convicted of a misdemeanor to an extended term of imprisonment **if it finds** one or more of the grounds specified in this Section. . . .”

§ 80.42. Extended Terms by Petition of Department of Corrections.

“On petition of the Director of Corrections . . . the court may extend his sentence . . . **if it finds** that such extension is necessary for protection of the public.”

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Apprendi v. N.J. (U.S. Supreme Court, 2000)

“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. . . . [I]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.”

530 U.S. 466, 490 (2000) (emphasis added)

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People v. Muritok (Guam Supreme Court, 2003)

“Applying the *Apprendi* doctrine to section 80.38, an examination of the statutory language reveals that the court is authorized to sentence a defendant to an extended term, after the court itself makes various findings specified in the statute. . . . Title 9 GCA § 80.38 is unconstitutional and a violation of the rule expressed in *Apprendi* because it impliedly removes from the jury and prescribes to the court the duty to assess [the] facts that increase the prescribed range of penalties to which a criminal defendant is exposed.”

2003 Guam 21 ¶¶ 46-47 (emphases added).

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Idea 1: The Court → “The Jury”

Could we just replace “the court” with “the jury”?

“The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if ~~it~~ **the jury** finds one or more of the grounds specified in this Section.”

Potential downsides:

1. No similar statute in other jurisdictions.
2. Would this foreclose a *Blakely* waiver?

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Idea 2: “if it finds” → “if it is proven”

Hawaii model:

“The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if ~~it finds~~ **it is proven beyond a reasonable doubt** . . .”

Compare Haw. Rev. Stat. § 706-662:

A defendant who has been convicted of a felony may be subject to an extended term of imprisonment under section 706-661 **if it is proven beyond a reasonable doubt** that an extended term of imprisonment is necessary for the protection of the public and that the convicted defendant satisfies one or more of the following criteria . . .

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Idea 3: Full Overhaul

Example: Oregon (O.R.S. § 136.770)

(1) When an enhancement fact relates to an offense charged in the accusatory instrument, the court shall submit the enhancement fact to the jury during the trial phase of the criminal proceeding unless the defendant:

- (a) Defers trial of the enhancement fact under subsection (4) of this section; or
- (b) Makes a written waiver of the right to a jury trial on the enhancement fact and:
 - (A) Admits to the enhancement fact; or
 - (B) Elects to have the enhancement fact tried to the court.

(2) If the defendant makes the election under subsection (1)(b)(B) of this section and is found guilty during the trial phase of the criminal proceeding, the enhancement fact shall be tried during the sentencing phase of the proceeding.

(3) If there is more than one enhancement fact relating to the offense and the defendant does not admit to all of them, the defendant shall elect to try to the jury or to the court all enhancement facts relating to the offense to which the defendant does not admit. Slide 11

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Further Research

Jurisdictions retaining “if the court finds . . .” language:

- **Florida:** F.S.A. § 775.084
- **Missouri:** V.A.M.S. § 558.016
- **New Jersey:** N.J. § 2C:44-3

Jurisdictions that have changed their statutes after *Apprendi*

- **Illinois:** 730 ILCS 5/5-8-2, revised after *People v. Swift*, 781 N.E.2d 292 (Ill. 2002)
- **Kansas:** K.S.A. § 21-4716(a), revised after *State v. Gould*, 23 P.3d 801 (Kan. 2001).
- **Minnesota:** M.S.A. § 609.1095, revised after *State v. Henderson*, 706 N.W.2d 758 (Minn. 2005)
- **Oregon:** O.R.S. § 136.770, revised after *State v. Sawatzky*, 96 P.3d 1288 (Or. Ct. App. 2004).

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