



HON. ROBERT J. TORRES  
CHIEF JUSTICE

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PRESIDING JUDGE

# Judiciary of Guam

Guam Criminal Law and Procedure Review Commission  
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CHAIRMAN

ANDREW SERGE QUENGA  
EXECUTIVE DIRECTOR

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
2024 THIRD QUARTER REPORT  
SUBMITTED TO THE**

GOVERNOR OF GUAM,  
SPEAKER OF THE GUAM LEGISLATURE, AND  
CHIEF JUSTICE OF GUAM  
OCTOBER 4, 2024

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
JUDICIARY OF GUAM  
GUAM JUDICIAL CENTER  
120 WEST O'BRIEN DRIVE  
HAGÁTÑA, GUAM 96910

## PREFACE

The Guam Criminal Law and Procedure Review Commission (CLRC or Commission) submits its third quarter report for 2024 summarizing its activities as required by 1 GCA § 25.07(a). Because the CLRC began operations in January of 2023, quarterly reports are based on the calendar year, rather than the fiscal year. This third quarter report summarizes activities from July 1, 2024 through September 30, 2024.

## CLRC STATUTORY AUTHORITY

The CLRC was created by *I Liheslaturan Guåhan* in Public Law 36-119 (enacted Nov. 9, 2022) to conduct the first complete review of Guam’s Criminal and Correctional Code and Criminal Procedure Code since their creation by the 13<sup>th</sup> Guam Legislature in 1976. Under P.L. 36-119, the CLRC exists as a division of the Supreme Court of Guam and receives administrative support from the Judiciary of Guam.

Under P.L. 36-119, the Commission is composed of 15 members representing the three branches of government, the Guam Bar Association (to include attorneys with prosecutorial and criminal defense experience), full-time and retired judicial officers, directors of government criminal justice and public safety agencies, and private individuals from community-based and public interest organizations relating to the criminal justice system. It is chaired by Superior Court Magistrate Judge Jonathan R. Quan and administered by a full-time Executive Director and one staffer.

## CLRC STAFF AND MEMBERS (updated)

Governor’s Appointees	Hon. Maria T. Cenzon, Hon. Anita A. Sukola, Ms. Valerie Reyes
Speaker’s Appointees	Attorney Phillip Tydingco, Attorney Michael Phillips, Attorney Christine Tenorio
Chief Justice’s Appointees	Hon. Jonathan R. Quan, Attorney F. Randall Cunliffe, Mr. Monty McDowell
Guam Bar President Appointees	Attorney Joseph B. McDonald, Attorney William B. Brennan
Statutory Members (or Designees)	Attorney General of Guam (Designee DAG Nathan Tennyson), Chief of Police (Designee Lt. Ron Taitano), Director of Corrections (Designee Maj. Antone F. Aguon), Executive Director of Public Defender Service Corp (Designee Deputy Director John Morrison)
Compiler of Laws	Attorney Geraldine Cepeda
Staff	Attorney Andrew Serge Quenga (Executive Director), Rennae Vanessa Meno (Administrative Support)
Ex-officio (auxiliary)	Hon. Elizabeth Barrett-Anderson, Attorney Kat Siguenza, Attorney Sean Brown, Attorney Brian Eggleston, Attorney Leonardo Rapadas, Attorney Kristine B. Borja

## **SIGNIFICANT CLRC ACTIVITIES JULY – SEPTEMBER, 2024**

1. The Commission convened a meeting on July 17, 2024 to report the status of its progress to the Guam Legislature. This meeting was held at the Justice Monessa J. Lujan Appellate Courtroom of the Supreme Court of Guam. This comprehensive report covering the work of the Commission since it started operations in 2023 is posted on the Commission's website.
2. The Commission convened a Plenary Meeting on September 12, 2024. Members deliberated on various agenda items, including recommendations to amend sections and chapters of the Criminal Code of Guam. The agenda, meeting packet, and YouTube video link for this meeting are available on the CLRC website. During this meeting, the following presentations were made:
  - The presentation by the Subcommittee on Drugs & Other Criminal Offenses was tabled.
  - The Subcommittee on Crimes Against Persons presented its review of specific sections from Chapters 17, 19, 25, 25A, 26, 31, 40, 89, and 93. After a lengthy and robust discussion, a vote on proposed amendments was tabled until the next plenary meeting to allow the Subcommittee to work with CLRC staff to prepare clean redlines for presentation to the plenary Commission. Approved recommendations will be reported in the 4<sup>th</sup> Quarter Report. For reference, the Subcommittee's PowerPoint presentation is attached to this report as Attachment 1.
  - The Subcommittee on Criminal Procedure presented a continuing review of 9 GCA §§ 7.25, 7.34 and Article 5 of Chapter 7. Recommendations and issues were presented for discussion and tabled for approval at a forthcoming plenary meeting. The Subcommittee reported that parts of Chapter 7 will be referred to the Drugs & Other Criminal Offenses Subcommittee at the request of their Chair. For reference, the Subcommittee's PowerPoint presentation is attached to this report as Attachment 2.

**CONCLUSION**

During the third quarter of 2024, the Commission continued to make progress in the review of the Criminal Code of Guam. The work of the CLRC continues to the best of the ability of each member. Our Subcommissions face a daunting task—reviewing thousands of criminal statutes throughout the Guam Code Annotated. Apart from the very small full-time staff of the CLRC, each member dedicates significant time to reviewing their assigned chapters and sections of the Criminal Code and discussing any proposed changes in working sessions with their respective Subcommissions. Our appointed and ex-officio volunteer members consist almost entirely of full-time attorneys with clients and litigation caseloads, high-ranking government law enforcement officials and private citizens with full-time work obligations. Chairman Quan and I thank all members for their commitment and diligence to the work of the Commission.



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Magistrate Judge Jonathan R. Quan  
Chairman



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Andrew Serge Quenga  
Executive Director

**ATTACHMENT 1**

**SUBCOMMISSION ON CRIMES AGAINST PERSONS  
POWERPOINT PRESENTATION  
PLENARY MEETING OF SEPTEMBER 12, 2024**



## Crimes Against Persons Subcommission Criminal Law & Procedure Review Commission

### Members and ex officio members

GPD Chief Steve Ignacio

GPD Lt. Ron Taitano

Public Defender Steve Hattori

Dep. Public Defender John Morrison

Assistant Attorney General Christine Tenorio

Attorney Sean E. Brown

Attorney Joseph B. McDonald

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

PRESENTATION BY J. MCDONALD

PLENARY MEETING

SEP. 12, 2024

Sep. 12, 2024

PLENARY MEETING, CRIMES AGAINST  
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## Overview

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

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

Sep. 12, 2024

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# Overview

## Administrative Procedure

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

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

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

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

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



# SUBSTANTIVE CRIMINAL CODE TITLE 9 SNAPSHOT

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



# SUBSTANTIVE CRIMINAL CODE

## TITLE 9 SNAPSHOT

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

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# SUBSTANTIVE CRIMINAL CODE

## TITLE 9 SNAPSHOT

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

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# SUBSTANTIVE CRIMINAL CODE

## TITLE 9 SNAPSHOT

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

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# SUBSTANTIVE CRIMINAL CODE

## TITLE 9 SNAPSHOT

CHAPTER	TITLE	STATUS OF REVIEW	RECOMMENDATION
22	<b>KIDNAPPING AND RELATED OFFENSES</b>	<p>Completed first pass.</p> <p>Tabled § 22.20.</p>	<p>Pending final action on § 22.20.</p> <p>All other sections; no changes recommended.</p>
19	<b>ROBBERY</b>	<p>Completed first pass.</p> <p>Tabled § 19.70.</p>	<p>Amend § 1981 to reduce offense level.</p> <p>Pending final action on § 19.70.</p>
17	<b>UNBORN VICTIMS OF VIOLENCE ACT</b>	Completed.	No changes recommended.

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# RECAP OF FIRST PASS REVIEW

## CRIMES AGAINST PERSONS IN TITLE 9 OF THE GUAM CODE ANNOTATED FIRST PASS SINCE LAST REPORT

### Amend:

§§ 31.30, 26.41, 25A102 (c), 25A103 (d), 25A103 (a) 1 (B), 25A104 (a) 1 (B), 25A105 (a) 1 (B), 25.10

### Repeal:

26.20-26.24, 26.41

### Tabled for further discussion and action:

25A202, 25A203, 25A204 25A\_\_\_ [definition of genitals to include anus], 93.20, 93.30, 93.35, 93.50, 89.06, 89.08, 89.03. , 31.65 and 31.70., 22.20 ,19.70



## SUBCOMMISSION RECOMMENDATIONS FOR AMENDMENTS TO THE SUBSTANTIVE CRIMINAL CODE

### SECTIONS

**31.30 (FAM. VIOL)**

**26.41, (HUM. TRAF.)**

**25A102 (C), 25A103 (D), 25A103 (A) 1 (B), 25A104 (A) 1 (B), 25A105 (A) 1 (B) (CHILD SOLICIT./PORNOG.),**

**25.10 (CRIM. SEX. CONDUCT)**



# Chapter 31

## OFFENSES AGAINST THE FAMILY

Amend to include more types of conduct:

### § 31.30. Child Abuse: Defined & Punished.

(a) A person is guilty of child abuse when:

(1) he subjects a child to cruel mistreatment;

(2) willfully causes or permits any child to suffer;

(3) inflicts upon a child unjustifiable physical pain or mental suffering; or

(4) having a child in his care or custody or under his control, he:

(A) deserts that child with intent to abandon him;

(B) subjects that child to cruel mistreatment; or

(C) unreasonably causes or permits the physical or emotional health of that child to be endangered or reasonably causes or permits that child to be placed in a situation where his or her person or health may be endangered; or

(D) neglects that child;

(d) As used in this Section:

(b) Child abuse is a felony of the third degree when it is committed under circumstances likely to result in death or serious bodily injury. Otherwise, it is a misdemeanor.

(c) Voluntary surrender of physical custody of a newborn infant by a mother to authorized Safe Haven personnel pursuant to the provisions of the Newborn Infant Safe Haven Act, 19 GCA, Chapter 13, Article 5, is an absolute defense to prosecution for child abuse as a result of deserting that child with intent to abandon that child under Subsection (a)(2)(A) of this Section.

(1) For purposes of this Subsection, "authorized Safe Haven personnel" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(a).

(2) For purposes of this Subsection, "mother" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(d).

(3) For purposes of this Subsection, "newborn infant" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(e).

(1) Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being.



# CH. 26 HUMAN TRAFFICKING AND CRIMINAL EXPLOITATION

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

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

NO DEFINITION OF MALICE IN GUAM'S VERSION OF MPC



# CH. 25A SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY

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

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

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

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



# CH. 25A SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY

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

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

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



# CH. 25 SEXUAL OFFENSES (CRIMINAL SEXUAL CONDUCT)

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

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

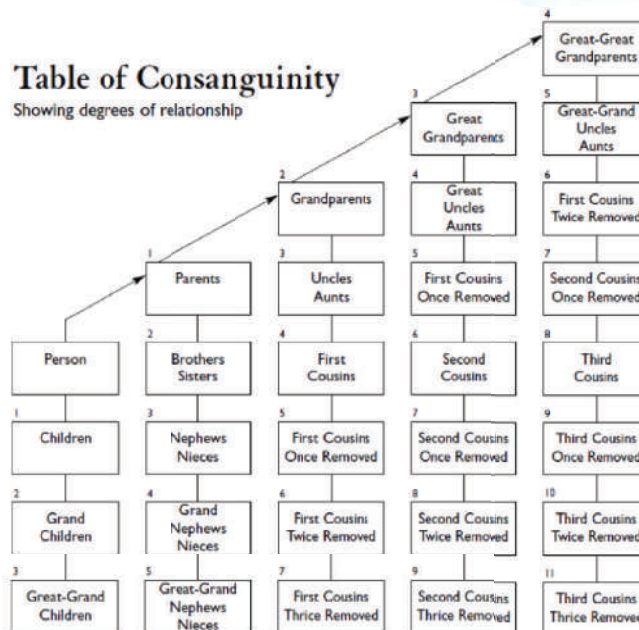
(a) As used in this Chapter:

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

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



# CH. 25 SEXUAL OFFENSES (CRIMINAL SEXUAL CONDUCT)





## CH. 19 ROBBERY

Amend § 19.50 to clarify language:

**§ 19.50. Terroristic Conduct; Defined & Punished.**

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



## CH. 22 KIDNAPPING

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

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

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



# CH. 22 KIDNAPPING

Other jurisdictions

## COLORADO

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

## OREGON

‘A person commits the crime of kidnapping in the second degree if, with intent to interfere substantially with another’s personal liberty, and without consent or legal authority, he:

‘(a) Takes the person from one place to another; or

‘\* \* \*’

‘Without consent’ is defined in ORS 163.215(1):

“Without consent’ means that the taking or confinement is accomplished by force, threat or deception, or, in the case of a person under 16 years of age or who is otherwise incapable of giving consent, \*325 that the taking or confinement is accomplished without the consent of his lawful custodian.’

## ARKANSAS

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

\* \* \* \*

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



# CH. 19 ROBBERY

Amend § 19.81 to reduce offense level:

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



SUBCOMMISSION RECOMMENDATIONS  
FOR REPEAL OF SECTIONS TO THE SUBSTANTIVE CRIMINAL CODE

**HUMAN TRAFFICKING CH. 26 ART. 2**

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**Chapter 26 HUMAN TRAFFICKING AND  
CRIMINAL EXPLOITATION**

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

**ARTICLE 2  
PREVENTION OF TRAFFICKING**

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

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## REPEAL

# CH. 26 HUMAN TRAFFICKING AND CRIMINAL EXPLOITATION

*Robust federal mechanism makes this unnecessary.*

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

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



*Thank you!*

**ATTACHMENT 2**

**SUBCOMMISSION ON CRIMINAL PROCEDURE  
POWERPOINT PRESENTATION  
PLENARY MEETING OF SEPTEMBER 12, 2024**



## Report of the Subcommittee on Criminal Procedure

September 12 , 2024

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

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



## Overview

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



## Amend § 7.25 to add “licensed psychologist” and make gender neutral

### § 7.25. Psychiatric or Psychological Examination and Procedure.

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

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

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

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



### § 7.25 Continued

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

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



## § 7.25 Continued

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

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



## § 7.25 Continued

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



### § 7.25 Continued

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

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

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



### § 7.25 Specific Issue for Discussion

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

...

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

**compare to**

#### **Guam Rule of Evidence 704(b)**

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



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

Table for Review by DOCO and Other Subcommisissions



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

Amendments shown in redline.

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

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

(1) the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully or forcefully entered, a business, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the business, residence, or occupied vehicle; and

(2) the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

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

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



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

(1) Habitable Property has the meaning provided by § 34.10. Habitable property ~~as used in this Section~~ are limited to business buildings for which the victim has beneficial control and use; and residences, vehicles and house boats for which the victim has a legal right to occupy.

~~Except when used in reference to a residence, habitable property, as used in this Section,~~ does not include yards or surrounding outdoor spaces ~~surrounding business buildings, residences, vehicles or house boats~~. Nothing herein is construed to limit the right of a victim to use defensive force in a manner consistent with Chapter 7 of Title 9, GCA in areas outside of his/her home, business, car or house boat;

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

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

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

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

~~(5)(6)~~ Defensive Force has the same meaning as self-defense as used in Chapter 7 of Title 9, GCA, except that a lawful occupant of habitable property has no duty or obligation to retreat.

**For discussion: curtilage added by PL 37-122.**



**§ 7.113. Immunity from Criminal Prosecution and Civil Action.**

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

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

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

or

(2) the person using force knew or reasonably should have known that the person was a law enforcement officer;

or

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

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

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

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

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