



HON. ROBERT J. TORRES
CHIEF JUSTICE

Judiciary of Guam

Administrative Office of the Courts
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910
Tel: (671) 475-3544 • Fax: (671) 475-3184



HON. ALBERTO C. LAMORENA, III
PRESIDING JUDGE

DANIELLE T. ROSETE, ESQ.
ADMINISTRATOR OF THE COURTS

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION (CLRC)

PLENARY MEETING | Thursday, October 5, 2023

In-person: Honorable Joaquin V.E. Manibusan Sr. Memorial Courtroom, Guam Judicial Center
via Videoconference (Zoom) and live streamed on the Judiciary of Guam YouTube Channel

MINUTES

I. CALL TO ORDER

Chairman Quan called the meeting to order at 12:00 p.m.

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 included in the meeting packet.

III. DETERMINATION OF QUORUM ROLL CALL

Management Officer Valerie Cruz called the roll:

CLRC Members:

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

Hon. Anita A. Sukola, Absent

Atty. William Bucky Brennan, Present, Law Office in Hagatna

Acting Director of Corrections Fred Bordallo, Present (Judiciary of Guam)

Chief of Police Stephen Ignacio or Designee Lt. David Brantley, Absent

Atty. Joseph McDonald, Present (Judiciary of Guam)

Atty. Randall Cunliffe, Present, Law office in Hagatna

Mr. Monty McDowell, Present, Office in Harmon

PD Designee Atty. John Morrison, Present (Judiciary of Guam)

Asst. AG Marianne Woloschuk, Present, (via Zoom at AG's Office in Tamuning)

Atty. Michael Phillips, Absent

Ms. Valerie Reyes, Present (later logged on via Zoom)

Atty. Christine Tenorio, Present (Judiciary of Guam)

Atty. Phillip Tydingco, Present (Courts)

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: Approval of August 31, 2023 Plenary Meeting

Chairman Quan presented the minutes of the plenary meeting on August 31, 2023 for approval. Atty Phillip Tydingco moved to approve the minutes, seconded by Mr. Monty McDowell. With no opposition, the minutes were approved.

V. OLD BUSINESS

A. Membership Update

Director Quenga stated we are awaiting the Governor's appointment of a replacement for Hon. Elizabeth Barrett-Anderson, who had to step down due to her membership on the Criminal Injuries Compensation Fund.

B. Third Quarter Report

Director Quenga requested subcommissions to submit quarterly reports.

C. Overview of Approvals of Recommendations of the Subcommissions on Criminal Procedure and Crimes Relating to Property at Plenary Meeting of August 31, 2023

Chairman Quan reminded members of the process for recording recommendations to amend, repeal or no change.

VI. NEW BUSINESS

A. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommittee on Drug & Other Criminal Offenses for Discussion and Approval

Acting Chair Cepeda presented updates and outlined proposed revisions in a PowerPoint presentation (Attachment 1 hereto) and the subcommission's recommendations:

The subcommission recommended renumbering Chapter 90 in its entirety to a new numbering format to comport with the rest of the GCA.

- **Article 1 – Department of Correction**

- § 90.10 Renumber to 90101 and add new subsections.
- § 90.15 Renumber to 90102 and amend to create Mission Statement.
- § 90.16 Renumber to 90103 and amend to defer to POST.
- § 90.16.1 Renumber to 90104 and amend.
- § 90.20 Repeal. According to DOC, the Corrections Advisory Council has never met. Repeal references to Corrections Advisory Council in any part of the GCA.
- § 90.25 Renumber to 90105, amend and consolidate with other sections involving the authority of the Director.
- § 90.27 Consolidate under 90105.
- § 90.30 Consolidate under 90105.
- § 90.35 Consolidate under 90105 and amend.
- § 90.40 Consolidate under 90105 and amend.
- § 90.41 Renumber to 90115 and amend.
- § 90.42 Renumber to 90116 and amend.
- § 90.43 Consolidate under 90116 and amend.
- § 90.44 Renumber to 90117 and amend.
- § 90.45 Renumber to 90107 and amend.
- § 90.46 Renumber to 90108.
- § 90.47 Renumber to 90109 and amend.
- § 90.47.01 Renumber to 90110 and amend.
- § 90.47.02 Renumber to 90111 and amend.
- § 90.47.03 Renumber to 90113 and amend.
- § 90.47.04 Repeal. According to DOC, Transfer Review Committee has never met.
- § 90.47.05 Repeal.
- § 90.48 Renumber to 90105(d) and amend.
- § 90.49 Renumber to 90114 and amend

Discussion:

Regarding 90.16, Atty Sean Brown asked if input from DOC was received regarding the POST requirements for DOC guards, and whether they might lose too many guards if required to comply. Acting Chair responded that the suggested amendment was from DOC. She noted that as part of the POST Commission requirements, each agency submitted its own Physical Fitness Qualifications Test (PFQT), and further, that deferring to POST requirements makes sense as it was the standard DOC adopted and already established.

Regarding 90.16.1, Atty Cunliffe suggested the language “subject to appropriation” should be “subject to availability of funds.” Acting Chair Cepeda agreed with the recommendation.

Regarding 90.20 and 90.47.04, and the two administrative bodies that were deleted, Acting Chair Cepeda reported these bodies were not referenced in any other part of the GCA.

- **Article 2 – Western Interstate Corrections Compact**

- § 90.50 Renumber to 90201.
- § 90.51 Renumber to 90202 and amend.
- § 90.52 Renumber to 90203.
- § 90.54 Renumber to 90204 and amend.
- § 90.56 Renumber to 90205.
- § 90.58 Renumber to 90206.
- § 90.60 Renumber to 90207.
- § 90.62 Renumber to 90208.
- § 90.64 Renumber to 90209.
- § 90.66 Renumber to 90210.
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- **Article 3 – Interstate Compact on Juveniles**

- § 90.80 Repeal – Move to Title 19, Chapter 20 DYA, as a new article.
- § 90.82 Repeal – Move to Title 19, Chapter 20 DYA, as a new article.
- § 90.84 Repeal – Move to Title 19, Chapter 20 DYA, as a new article.

Discussion:

Regarding Article 3, Acting Chair Cepeda reported that the subcommission decided it is in the wrong place and suggested moving it to Title 19, Chapter 20 DYA and there is a newer Interstate Compact on Juveniles that the Legislature should consider.

- **Article 4 Prison Industries**

- § 90.90 Renumber to 90401 and amend.
- § 90.91 Renumber to 90402 and amend.

Discussion:

Regarding 90.90, the subcommission recommends removal of the earnings formula. There is a specific earnings formula in subsection (c). Suggest a new language to remove reference to that and rely on section (a). There are constraints on the uses of the fund. This could be addressed through rules and regulations.

- **Article 5 – Transfer Pursuant to Treaty**

- § 90.100 (Untitled Section) Renumber to § 90113.
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- **Article 6 – Civilian Corrections Reserve Program**

- § 90.201 Renumber to 90601.
- § 90.202 Renumber to 90602.

- § 90.203 Renumber to 90603.
- § 90.204 Renumber to 90604.
- § 90.205 Renumber to 90605.
- § 90.206 Renumber to 90606.
- § 90.207 Renumber to 90607.
- § 90.208 Renumber to 90608.
- § 90.209 Renumber to 90609.
- **Article 7 – Department of Corrections Modernization Act of 2021 §§ 90.301-90.314**
 - § 90.301 Renumber to 90701 with amendments.
 - § 90.302 Renumber to 90702.
 - § 90.302 Renumber to 90703.
 - § 90.303 Renumber to 90704.
 - § 90.305 Renumber to 90705.
 - § 90.306 Renumber to 90706.
 - § 90.307 Renumber to 90707.
 - § 90.308 Renumber to 90708.
 - § 90.309 Renumber to 90709.
 - § 90.310 Renumber to 90710.
 - § 90.311 Renumber to 90711.
 - § 90.312 Renumber to 90712.
 - § 90.313 Renumber to 90713.
 - § 90.314 Renumber to 90714.

Discussion:

Regarding § 90.301, the subcommission recommended amendments. However, the Plenary Commission did not approve of the recommendation.

Chairman Quan called for the vote on the recommendations as follows:

Article 1

- | | |
|-----------|---|
| § 90.10 | Amend |
| § 90.15 | Amend |
| § 90.16 | Amend |
| § 90.16.1 | Amend with “subject to availability of funds” |
| § 90.20 | Repeal |
| § 90.25 | Amend |
| § 90.27 | Amend |
| § 90.30 | Amend |
| § 90.35 | Amend |
| § 90.40 | Amend |
| § 90.41 | Amend |
| § 90.42 | Amend |
| § 90.43 | Amend |
| § 90.44 | Amend |

§ 90.45	No Change
§ 90.46	No Change
§ 90.47	No Change
§ 90.47.01	No Change
§ 90.47.02	No Change
§ 90.47.03	Amend
§ 90.47.05	Repeal
§ 90.47.04	Repeal
§ 90.48	Amend
§ 90.49	Amend

With no objection, these recommendations for Article 1 were moved to the final reading file.

Article 2

§ 90.50	No Change
§ 90.51	Amend
§ 90.52	No Change
§ 90.54	No Change
§ 90.56	No Change
§ 90.58	No Change
§ 90.60	No Change
§ 90.62	No Change
§ 90.64	Amend
§ 90.66	Amend

Article 3

§ 90.80	Repeal
§ 90.82	Repeal
§ 90.84	Repeal

Article 4

§ 90.90	Amend
§ 90.91	Amend

Article 5

§ 90.100	Reenact as § 90113
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Chairman Quan asked for a motion to accept the recommendations to Articles 2, 3, 4 and 5. Atty McDonald so moved, seconded by Atty Tydingco. Without objection these recommendations were moved to the final reading file.

Article 6

§ 90.201	No Change
§ 90.202	No Change
§ 90.203	No Change
§ 90.204	No Change
§ 90.205	No Change
§ 90.206	No Change
§ 90.207	No Change
§ 90.208	No Change
§ 90.209	No Change

Chairman Quan summarized the recommendations to Article 6 as no change other than renumbering and requested a motion to approve. Atty Cunliffe so moved, seconded by Atty Tydingco. Without objection the recommendations were moved to the final reading file.

Article 7

§ 90.301	No Change. Recommendation to amend not approved.
§ 90.302	No Change
§ 90.304	No Change
§ 90.305	No Change
§ 90.306	No Change
§ 90.307	No Change
§ 90.308	No Change
§ 90.309	No change
§ 90.310	No change
§ 90.311	No Change
§ 90.312	No Change
§ 90.313	No Change
§ 90.314	No Change

Chairman Quan summarized the recommendations for Article 7 as no change other than renumbering. Regarding 90.301, the Chairman stated the plenary body suggested no change as opposed to amend and asked for a motion. Atty Cunliffe so moved, seconded by Acting DOC Director Bordallo. Without objection these recommendations were moved to the final reading file.

B. Presentation of Recommendations of Amendments, Repeals and No Changes by the Subcommittee on Crimes Against Persons for Discussion and Approval

Subcommittee Chair, Atty McDonald, outlined proposed revisions in a PowerPoint presentation (Attachment hereto) and the Subcommittee's recommendations:

- Chapter 16 Criminal Homicide

- § 16.10 No Change – Definitions Applicable to Chapter
- § 16.20 No Change – Criminal Homicide Defined
- § 16.30 Amend - Aggravated Murder Defined.
- § 16.40 Amend – Murder Defined
- § 16.50 Amend – Manslaughter Defined and Classified
- § 16.60 No Change – Negligent Homicide Defined and Classified

Discussion:

Regarding 16.30, 16.40 and 16.50, Atty McDonald pointed out issues and inconsistencies in amendments to these sections by P.L. 24-282 in 1998. Recommended amendments intended to fix these issues.

Regarding 16.30, Atty Brennan clarified that (b) is unchanged.

Regarding 16.40, Chairman Quan clarified that (b) is unchanged.

Regarding 16.50 Option 1 recommended amendments, Atty Cunliffe raised a concern on removing the parenthetical language from (a)(2) and moving it to a new (b). The Commission agreed to remove the parenthesis mark and keep the language in (a)(2). Chairman Quan read back 16.50 with the agreed upon recommended amendments as follows:

§16.50. Manslaughter Defined and Classified.

(a) Criminal homicide constitutes manslaughter when:

- (1) it is committed recklessly; or
- (2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence; or
- (3) death is indirectly or proximately caused such as an accident by the illegal use of a Schedule I or Schedule II Controlled Substance as defined by chapter 67 of this title, to a person under the influence of such controlled substance; or
- (4) death of a person who is eighteen (18) years or older results from a knowing or willing transfer or sale of a Schedule I or Schedule II Controlled substance, where such control substance approximately causes the death of such person.

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

Chairman Quan called for a vote on the recommendations. So moved by Atty Tydingco, seconded by Acting DOC Director Bordallo. Without objection the recommendations were moved to the final reading file.

Chairman Quan summarized the recommendations for Chapter 16 as follows:

- § 16.10 No Change
- § 16.20 No Change
- § 16.30 Amend and move to the second reading file
- § 16.40 Amend and move to the second reading file
- § 16.50 Amend and move to the second reading file
- § 16.60 No Change

Atty McDonald confirmed these recommendations.

C. Notice of Next Meeting: Thursday, December 07, 2023, Noon (Tentative)

Chairman Quan noted the next plenary meeting will be scheduled for Thursday, December 7, 2023 at 12 noon.

VII. Communications

None.

VIII. Public Comments

None.

IX. Adjournment

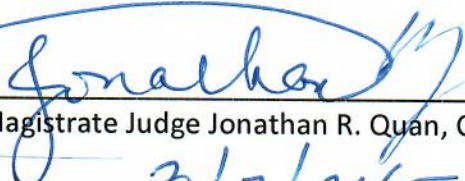
Chairman Quan adjourned the meeting without objection.

Respectfully submitted this 29th day of February, 2024.



Andrew S. Quenga, Executive Director

As set out above, the minutes of the October 05, 2023 meeting were approved by the CLRC at the February 29, 2024 meeting.



Magistrate Judge Jonathan R. Quan, Chairman

Dated: 3/7/24-