



HON. ROBERT J. TORRES  
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA, III  
PRESIDING JUDGE

# Judiciary of Guam

Guam Criminal Law and Procedure Review Commission  
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910  
Tel: (671) 475-3278 • Fax: (671) 475-3140



HON. JONATHAN R. QUAN  
CHAIRMAN

ANDREW SERGE QUENGA  
EXECUTIVE DIRECTOR

## AGENDA

### **I. CALL TO ORDER**

### **II. PROOF OF DUE NOTICE OF MEETING**

### **III. DETERMINATION OF QUORUM**

### **IV. DISPOSAL OF MINUTES    JUNE 13, 2024**

### **V. OLD BUSINESS**

- A. Subcommittee Status Update and Report of the Executive Director

### **VI. NEW BUSINESS**

- A. Subcommittee on Drugs & Other Criminal Offenses: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
- B. Subcommittee on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
- C. Subcommittee on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
- D. Notice of Next Meeting: Thursday, November 7, 2024, Noon (Tentative)

### **VII. COMMUNICATIONS**

### **VIII. PUBLIC COMMENT**

### **IX. ADJOURNMENT**



**DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES  
GUAM BOARD OF BARBERING AND COSMETOLOGY**

194 Herman Cortez Ave. Terbaje Professional Building, Suite 213  
Hagåtña, Guam 96910

Website: <https://guamhpl.org/gbbc>  
Contact No.: 671-735-7404/08-12

**Guam Board of Barbering and Cosmetology**  
Monday, September 9, 2024 at 9:00 a.m. (Guam ChST)

Join Zoom Meeting:  
<https://us06web.zoom.us/j/89466917812?pwd=wB87lxL9B6I0nHGMbG91dIzV5bGp.1>

Meeting ID: 894 6691 7812  
Passcode: 662628

**AGENDA**

- I. Call to Order:
  - a. Roll Call
  - b. Proof of Publications
- II. Approval of Agenda
- III. Approval of Minutes
- IV. HPLO Administrator's Report
- V. Treasurer's Report
- VI. Old Business:
  - (a) Rules and Regulations - On-Going
  - (b) Complaints
    1. GBBC-CO-2024-0001
    2. GBBC-CO-2024-0002
    3. GBBC-CO-2024-0003
- VII. New Business:
  - (a) Applications for Examination
  - (b) Applications for Apprenticeship
  - (c) Applications for Re-Examination
  - (d) Applications for Establishment
  - (e) Special Japanese License
  - (f) Francine Galao
- VIII. Next Board Meeting
- IX. Adjournment:

To view the names of the applicants being considered go to <https://guamhpl.org/gbbc>  
**LIVE Streaming link**  
[https://go.opengovguam.com/meetings\\_list/gbbc](https://go.opengovguam.com/meetings_list/gbbc)

This advertisement was paid for by DPHSS/Health Professional Licensing Office-Local Funds.

For more information, please contact the Board office at 735-7404/08 thru 12. Persons needing telecommunication device for the Hearing/Speech Impaired (TDD) may contact 475-8339.



**Guam Board of Social Work**

**Regular Virtual Board Meeting,**  
Thursday September 12, 2024, 11:00 A.M.

Join Zoom Meeting:  
<https://us06web.zoom.us/j/85154808796?pwd=E1Kza3ZUBA84JOYPzqsPGpNPT1Hzh.1>  
Meeting ID: 851 5480 8796  
Passcode: 889321

**MEETING AGENDA:**

- I. CALL TO ORDER:
  - A. Confirmation of Public Notice
- II. DETERMINATION OF QUORUM
- III. ADOPTION OF AGENDA
- IV. REVIEW AND APPROVAL OF MINUTES
  - A. August 08 & 26, 2024
- V. HPLO ADMINISTRATOR'S REPORT
- VI. CHAIRPERSON'S REPORT
- VII. COMMITTEE REPORTS:
  - A. Finance & Budget
  - B. Statutes, Rules and Forms
- VIII. OLD BUSINESS:
  - A. Complaint: GBSW-CO-2024-001
  - B. Consideration of Applications for Renewal of Licensure
  - C. Consideration of Applications for Initial Licensure:
- IX. NEW BUSINESS:
  - A. Consideration of Application for Initial Licensure:
- X. NEXT BOARD MEETING:
  - A. The Guam Board of Social Work next regularly scheduled board meeting, October 03, 2024 at 11:00AM.
- XI. ADJOURNMENT:

To view the names of the applicants being considered, go to <https://guamsocialwork.org>  
**LIVE Streaming link**  
[https://go.opengovguam.com/meetings\\_list/gbsw](https://go.opengovguam.com/meetings_list/gbsw)

This advertisement was paid for by DPHSS/Health Professional Licensing Office-Local Funds

For more information, please contact the Board office at 735-7404/10 thru 12. Persons needing telecommunication device for the Hearing/Speech Impaired (TDD) may contact 475-8339

**PUBLICATION NOTICE**

In accordance with the provisions of Guam Code Annotated, Title XI, Chapter III, Section 3315, notice is hereby given that:

**JAE HOON CORPORATION  
DBA: SUPER HAPPY MART (NEW)**

has applied for a Class: 5(five) General Off Sale Alcoholic Beverage License said premises being marked as Lot: LOT 5106-R7 958 NORTH MARINE CORPS DR. UPPER TUMON Tamuning, Tumon, Harmon

**Department of Public Health & Social Services  
GUAM BOARD OF NURSE EXAMINERS  
Health Professional Licensing Office**

**REGULAR BOARD MEETING**  
Thursday, September 12, 2024 at 3:00 PM  
Join Zoom Meeting  
<https://us06web.zoom.us/j/85366634105?pwd=ySnH1H8LEdbTsbwd9TZG4UilNycP.1>  
Meeting ID: 853 6663 4105  
Passcode: 002496

**AGENDA**

- I. CALL TO ORDER
  - a) Proof of Publication
  - b) Roll Call
- II. ADOPTION OF AGENDA
- III. APPROVAL OF MINUTES
- IV. TREASURER'S REPORT
- V. COMMITTEE REPORTS
  - a) Rules and Regulations (Proposed)
- VI. NURSING EDUCATION
  - a) Nurse Assistant Annual Report - GMTCC
  - b) Nurse Assistant Annual Report - UOG
  - c) Nurse Assistant Annual Report - GCC
- VII. ADMINISTRATOR'S REPORT
  - 1) GBNE-CO-20-007/1, 2, 3, 4, 6 & 7 (G. Woodard) Received 9/16/20
  - 2) GBNE-CO-23-001 (P. Calalo) Received 4/3/23
- VIII. NEW BUSINESS
  - a) Initial Application
- IX. NEXT BOARD MEETING
- X. ANNOUNCEMENTS

To view the names of the applicants being considered, go to: <https://guamhpl.org/gbne>

To view the LIVE Streaming link:  
[https://go.opengovguam.com/meetings\\_list/gbne](https://go.opengovguam.com/meetings_list/gbne)

For more information, please contact the Board office at (671) 735-7409-12.

Persons needing a telecommunication device for the Hearing/ Speech Impaired (TDD) may contact (671) 475-8339.

This advertisement was paid for by DPHSS/ Health Professional Licensing Office - Local Funds.

**pfc VEHICLE FOR SEAL BID  
"As is"**

**2013 FORD EDGE WAGON**

Seal bid accepted until **5:00 PM Friday September 6, 2024**

- PFC has the right to refuse any and all bids
- Vehicles will be available for inspection by appointment only

Tamuning Center Mon - Fri: 9AM to 5PM  
Call Center (671) 647-6820

**CAMACHO CALVO LAW GROUP LLC**

**VINCENT C. CAMACHO**  
[vcamacha@camachocalvo.law](mailto:vcamacha@camachocalvo.law)  
356 E. Marine Corps Drive, Suite 201  
Hagåtña, Guam 96910  
Telephone No. 671.472.6813  
Facsimile No. 671.477.4375  
Attorneys for Executrix  
MONICA F. SAN NICOLAS

**IN THE SUPERIOR COURT OF GUAM**

**IN THE MATTER OF THE ESTATE  
OF  
LOURDES PUNZALAN FLORES,  
Deceased.**

**PROBATE CASE NO. PR0117-24**

**NOTICE OF CREDITORS**

**NOTICE IS HEREBY GIVEN** by MONICA F. SAN NICOLAS, Executrix of the Estate of LOURDES PUNZALAN FLORES, deceased, to the creditors of, and all persons having claims against said Estate or against said Decedent, that within sixty (60) calendar days after the date of the first publication of this notice, they either file them with necessary vouchers in the Office of Clerk of the Superior Court of Guam, or exhibit them with the necessary vouchers to said Executrix or her attorneys of record, Camacho Calvo Law Group LLC, 356 E. Marine Corps Drive, Suite 201, Hagåtña, Guam 96910, the same being the place for the transaction of the business of said Estate.

DATED: Hagåtña, GU, August 23, 2024.

**CAMACHO CALVO LAW GROUP LLC  
By: /s/ VINCENT C. CAMACHO  
Attorneys for Executrix  
MONICA F. SAN NICOLAS**



**Senator William A. Parkinson**

Chairperson, Committee on Fire, Agriculture, Power and Energy Utilities, Public Transit, Unemployment Insurance and Universal Health Insurance

**FIRST NOTICE OF PUBLIC HEARING**

Friday September 13, 2024 at 9:00 a.m.

Guam Congress Building in the Public Hearing Room.

Please be advised that the Committee will hear and accept testimonies on the following item:

**AGENDA FOR 9:00 A.M.:**

- **PUBLIC HEARING** on the following Bills:
  - I. **Bill No. 332-37 (COR)** - William A. Parkinson - "AN ACT TO AMEND § 8601. (i)(2), § 8602. (a), (b) AND (d), AND § 8603. (a) AND (b) OF ARTICLE 6, CHAPTER 8, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO VIRTUAL POWER PLANT PROGRAM."
  - II. **Bill No. 336-37 (COR)** - Telo T. Taitague, William A. Parkinson, Frank Blas, Jr., Chris Barnett, Joanne M. Brown, Jesse A. Lujan - "AN ACT TO AMEND SECTION 8108(A)(7) OF DIVISION 1, CHAPTER 8, TITLE 11, GUAM CODE ANNOTATED RELATIVE TO THE LAWFUL OPERATION OF CANNABIS-RELATED FACILITIES."

If you are interested in participating in the Public Hearing to provide testimony, please contact the Office of Senator William A. Parkinson via electronic mail at [senatorparkinson@guamlegislature.org](mailto:senatorparkinson@guamlegislature.org) or call 671-989-1101 no later than Thursday September 12, 2024 for guidance.

In compliance with the Americans with Disabilities Act (ADA), individuals requiring assistance or accommodations should contact the Office of Senator William A. Parkinson at 671-989-1101 or email at [senatorparkinson@guamlegislature.org](mailto:senatorparkinson@guamlegislature.org).

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117, and stream online via i Liheslaturan Guåhån's live feed on YouTube <https://www.youtube.com/@GuamLegislatureMedia>. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing.

We are looking forward to your participation!

*This ad is paid for by Legislature funds.*

Suite 906, DNA Building, 238 Archbishop FC Flores St, Hagåtña, 96910, Guam  
Phone number (671)989-1101 or via email: [senatorparkinson@guamlegislature.org](mailto:senatorparkinson@guamlegislature.org)

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
PLENARY MEETING SEPTEMBER 12, 2024  
NOTICE OF MEETING**

The Guam Criminal Law and Procedure Review Commission will conduct a plenary meeting on **Thursday, September 12, 2024, at 12:00 pm** in the Guam Judicial Center Judge Joaquin V.E. Manibusan, Sr. Memorial Courtroom, 120 West O'Brien Drive, Hagåtña, and by videoconference. The meeting will be streamed live on the Judiciary of Guam YouTube channel: <https://www.youtube.com/channel/UCfnFCWwllp99fAeh9zi4Qd4g>

**AGENDA**

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES JUNE 13, 2024
- V. OLD BUSINESS
  - A. Subcommittee Status Update and Report of the Executive Director
- VI. NEW BUSINESS
  - A. Subcommittee on Drugs & Other Criminal Offenses: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - B. Subcommittee on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - C. Subcommittee on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - D. Notice of Next Meeting: Thursday, November 7, 2024, Noon (Tentative)
- VII. COMMUNICATIONS
- VIII. PUBLIC COMMENT
- IX. ADJOURNMENT

Any person(s) needing special accommodations, auxiliary aids, or services, please contact the Executive Director Andrew Quenga at 671-475-3278.

This ad was paid for with Government of Guam funds.  
Magistrate Judge Jonathan R. Quan, Chairman

**CIVIL SERVICE COMMISSION**

*KUMISION / SETBISION SIBIT*

Bell Tower Suite 201, 710 W. Marine Corps Drive, Hagåtña, Guam 96910  
Tel: (671) 647-1855 • Fax: (671) 647-1867

**NOTICE OF MEETING**

**IN-PERSON MEETING AT 9:00 A.M. ON TUESDAY, SEPTEMBER 17, 2024.**

The public can access a live stream of this meeting on the CSC website at: [csc.guam.gov](http://csc.guam.gov) or via zoom at:

<https://us06web.zoom.us/j/88669617420?pwd=fEF3Ry7N35yZmDSc0lle2wadeMBU6.1>  
(Meeting ID: 886 6961 7420 / Passcode: 736848)

**AGENDA:**

- I. CALL TO ORDER.
- II. APPROVAL OF MINUTES: May 07, 2024 & May 14, 2024.
- III. NEW BUSINESS:
  - (1) POST AUDIT HEARING: *Arcefi B. Quilla vs. Department of Education (DOE); CSC Case No.: 24-PA03.*
- IV. OLD BUSINESS:
  - (1) SIGNING: DECISION AND ORDER. *Samuel Donato vs. Department of Corrections (DOC); CSC Case No.: 15-AA20D SP.*
  - (2) SIGNING: JUDGMENT OF DISMISSAL. *Lisa Mosher vs. Department of Education (DOE); CSC Case No.: 24-AA06S.*
  - (3) SIGNING: JUDGMENT OF DISMISSAL. *Lisa Mosher vs. Department of Education (DOE); CSC Case No.: 24-AA07S.*
- V. GENERAL BUSINESS:
  - (1) Bills and Laws affecting CSC: None.
  - (2) Administrative Counsel Litigation Update.
  - (3) Administrative Matters:
    - (a) Board Training: Civil Service Commission Board Members.
- VI. ADJOURNMENT.

For special accommodations, please contact Maria P. Masnayan, CSC ADA Coordinator at (671) 647-1872 / (671) 647-1855.

/s/ Daniel D. Leon Guerrero, Executive Director  
Paid by the Civil Service Commission

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
PLenary MEETING SEPTEMBER 12, 2024  
NOTICE OF MEETING**

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**AGENDA**

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES JUNE 13, 2024
- V. OLD BUSINESS
- VI. NEW BUSINESS
  - A. Subcommission Status: Update and Report of the Executive Director
  - B. Subcommission on Drugs & Other Criminal Offenses: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - C. Subcommission on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - D. Subcommission on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - E. Notice of Next Meeting: Thursday, November 7, 2024, Noon (Tentative)
- VII. COMMUNICATIONS
- VIII. PUBLIC COMMENT
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This ad was paid for with Government of Guam funds.  
Magistrate Judge Jonathan R. Quan, Chairman



**REGULAR BOARD MEETING**

Thursday, September 12, 2024 at 3:00 PM

Join Zoom Meeting

<https://us06web.zoom.us/j/85366634105?pwd=ySnH1H8LEdbRtSbw9ZG4UilNyacP.1>

Meeting ID: 853 6663 4105  
Passcode: 002496

**AGENDA**

- I. CALL TO ORDER
  - a) Proof of Publication
  - b) Roll Call
- II. ADOPTION OF AGENDA
- III. APPROVAL OF MINUTES
- IV. TREASURER'S REPORT
- V. COMMITTEE REPORTS
  - a) Rules and Regulations (Proposed)
- VI. NURSING EDUCATION
  - a) Nurse Assistant Annual Report - GMTC
  - b) Nurse Assistant Annual Report - UOG
  - c) Nurse Assistant Annual Report - GCC
- VII. ADMINISTRATOR'S REPORT
  - 1) GBNE-CO-20-007/1, 2, 3, 4, 6 & 7 (G. Woodard) Received 9/16/20
  - 2) GBNE-CO-23-001 (P. Calalo) Received 4/3/23
- VIII. NEW BUSINESS
  - a) Initial Application
- IX. NEXT BOARD MEETING
- X. ANNOUNCEMENTS

To view the names of the applicants being considered, go to: <https://guamhplp.org/gbne>

To view the LIVE Streaming link: [https://go.opengovguam.com/meetings\\_list/gbne](https://go.opengovguam.com/meetings_list/gbne)

For more information, please contact the Board office at (671) 735-7409-12.

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**Guam Board of Social Work**

**Regular Virtual Board Meeting,**  
Thursday September 12, 2024, 11:00 A.M.

Join Zoom Meeting:

<https://us06web.zoom.us/j/85154808796?pwd=E1Kza3ZUBA84JOYPzqsPGpNPT1Hzh.1>

Meeting ID: 851 5480 8796  
Passcode: 889321

**MEETING AGENDA:**

- I. CALL TO ORDER:
  - A. Confirmation of Public Notice
- II. DETERMINATION OF QUORUM
- III. ADOPTION OF AGENDA
- IV. REVIEW AND APPROVAL OF MINUTES
  - A. August 08 & 26, 2024
- V. HPLP ADMINISTRATOR'S REPORT
- VI. CHAIRPERSON'S REPORT
- VII. COMMITTEE REPORTS:
  - A. Finance & Budget
  - B. Statutes, Rules and Forms
- VIII. OLD BUSINESS:
  - A. Complaint: GBSW-CO-2024-001
  - B. Consideration of Applications for Renewal of Licensure
  - C. Consideration of Applications for Initial Licensure:
- IX. NEW BUSINESS:
  - A. Consideration of Application for Initial Licensure:
- X. NEXT BOARD MEETING:
  - A. The Guam Board of Social Work next regularly scheduled board meeting, October 03, 2024 at 11:00AM.
- XI. ADJOURNMENT:

To view the names of the applicants being considered, go to <https://guamsocialwork.org> LIVE Streaming link [https://go.opengovguam.com/meetings\\_list/gbsw](https://go.opengovguam.com/meetings_list/gbsw)

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For more information, please contact the Board office at 735-7404/10 thru 12. Persons needing telecommunication device for the Hearing/Speech Impaired (TDD) may contact 475-8339



**GUAM DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

501 MARINER AVENUE, SUITE 116  
BARRIGADA, GUAM 96913-1608  
TELEPHONE 671-475-0438  
WEBSITE: [www.gdoe.net](http://www.gdoe.net)



CARMEN T. CHARFAUROS  
Supply Management  
Administrator

**REQUEST FOR PROPOSAL  
GDOE RFP 005-2024**

**Food Commodities**

**SUBMISSION DATE: Friday, September 20, 2024 at 3:00 p.m. CHST**

**Note:** It is solely the Offeror's responsibility to review the website on a daily basis for the issuance of Amendments/Clarifications for any possible changes to the RFP.

RFP packages are available for download on the GDOE website at [www.gdoe.net/District/Department/12-Office-of-Supply-Management](http://www.gdoe.net/District/Department/12-Office-of-Supply-Management).

\* A hard copy may also be picked up at the GDOE Office of Supply Management at 501 Mariner Avenue, Suite 116 Barrigada, Guam 96913-1608.

\* A non-refundable fee of \$10.00 (cash only) is required upon hard copy pick-up.

This RFP is being funded, either wholly or in part, by U.S. Department of Agriculture, Food & Nutrition Service (FNS), and governed by the 7CFR Parts 210, 220, 225 and 226.

/S/CARMEN T.CHARFAUROS  
SUPPLY MANAGEMENT ADMINISTRATOR  
For: K. ERIK SWANSON, Ph.D.  
SUPERINTENDENT OF EDUCATION

**NOAA Fisheries to Host Public Hearings on Proposed Endangered Species Act Listings for Giant Clams**

NOAA Fisheries is seeking comments on their proposal to list five species of giant clams as endangered and five species of giant clams as threatened under the Endangered Species Act. In addition to the listing determinations, the proposed rule includes specific protective regulations for the five species that are proposed to be listed as threatened.

On Tuesday, September 17th, NOAA Fisheries is hosting an informational meeting and public hearing in Guam at Pacific Islands Club. The informational meeting will begin at 6:00 pm with a brief presentation by NOAA Fisheries, followed by a question and answer session during which members of the public may ask clarifying questions about the proposed rule. The public hearing will begin at 7:00 pm, when members of the public will have the opportunity to provide oral comments on the record regarding the proposed listing determination. Doors open at 5:30 pm.

In advance of the public hearing, NOAA Fisheries is also hosting a public listening session from 1:00 to 4:00 pm to provide an additional forum for members of the local community to share information about the potential impact of the proposed ESA listing determination in Guam. Like the public hearings, the listening sessions will begin with a brief presentation by NOAA Fisheries providing an overview of the proposed rule. After the presentation, participants will have an opportunity to ask clarifying questions or voice concerns about the proposed rule, which NOAA Fisheries staff will address to the extent practicable. Doors open at 12:30 pm for the listening session.

You may also provide comments on the proposed rule online at <https://www.regulations.gov/commenton/NOAA-NMFS-2017-0029-0027>. Or you may mail your comments. For addresses and more information, please see our website <https://www.fisheries.noaa.gov/action/proposed-rule-10-species-giant-clam-s-under-endangered-species-act>



# Judiciary of Guam

Guam Criminal Law and Procedure Review Commission  
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Tel: (671) 475-3278 • Fax: (671) 475-3140



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, JUNE 13, 2024 MINUTES

### I. CALL TO ORDER

The meeting was called to order by Chairman Jonathan Quan at 12:00 PM.

### II. PROOF OF DUE NOTICE OF MEETING

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

### III. DETERMINATION OF QUORUM

CLRC Ex-Officio Geraldine Cepeda called the roll.

CLRC Members:

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

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

Hon. Anita A. Sukola, Present on Zoom, Tumon

Atty. William Bucky Brennan, Present, Judiciary of Guam

DOC Director Fred Bordallo, Present, Judiciary of Guam

Chief of Police Stephen Ignacio or Designee Lt Ron Taitano, (No response during roll call)

Atty Joseph B McDonald, Present on Zoom, Sinajana

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

Mr. Monty McDowell, Present, Judiciary of Guam

Public Defender Stephen Hattori or Designee Dep. Dir. John Morrison. Present on Zoom, Sinajana

Attorney General Douglas Moylan or Designee AAG Steven Coaty - Nathan Tennyson Present, Judiciary of Guam

Atty. Mike Phillips, Present on Zoom, Hagåtña

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

Atty. Christine Tenorio, Present on Zoom, Tamuning

Atty. Phillip Tydingco, Present, Judiciary of Guam

Ex-Officio, (Non-Voting Members)

Hon. Elizabeth Barrett-Anderson, Present on Zoom

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

Compiler of Laws Geraldine Cepeda, Present, Judiciary of Guam

Asst. PD Brian Eggleston, Present on Zoom

Chairman Quan acknowledged a quorum present.

### IV. DISPOSAL OF MINUTES: April 4, 2024

The minutes from the previous Plenary Meeting, April 4, 2024, was approved without objection.

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

## V. OLD BUSINESS

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

Director Quenga provided an informational report.

- 2024 First Quarter Report submitted on May 7, 2024 and posted on the webpage.
- Work by all Subcommissions continues on assigned chapters. Large number of chapters left to review. Encourage all Subcommissions to continue diligent work to fulfill our mandates.
- For FY2025 budget submission, status quo CLRC budget submitted to the Judiciary and proposed amendment to extend submission of final report of the CLRC an additional 24 months. The difficulty of members to meet and review statutes due to professional and personal obligations.

## VI. NEW BUSINESS

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

Presentation was tabled until next plenary meeting.

### B. Subcommittee on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval

Subcommission Chair Judge Sukola introduced Director Quenga to give the presentation.

Director Quenga presented proposed revisions and recommendations for 9 GCA Chapter 7 in a PowerPoint presentation (Attachment 1).

- 9 GCA Chapter 7 Exemptions and Defenses Article 1 Exemptions
  - § 7.10. Exemption from Criminal Liability Due to Juvenile Status. Amend as shown in Attachment 1, Slide 3.
    - Discussion: “Juvenile” in the title changed to “minor,” which is the term defined and used in the Family Court Act (19 GCA § 5102). “Juvenile Court” changed to “Family Court” per 19 GCA Chapter 5 (The Family Court Act), which replaced “Juvenile Court” in the 1970 Code of Civil Procedure Title V, Chapter I.
- Article 2 Mental Responsibility
  - § 7.16. Defense: Mental Disease or Defect. No change.
  - § 7.19. Same: Admissibility of Evidence Showing. Amend title as shown in Attachment 1, Slide 4.
    - Discussion: Non-substantive amendment to section title for clarification of the title.
  - § 7.22. Same: Procedure for Assertion of. Amend as shown in Attachment 1, Slide 5.
    - Discussion: Non-substantive amendment to section title for clarification.
  - § 7.25. Psychiatric Examination and Procedure. Tabled.

- Discussion: Section referred to Judiciary’s Client Services Division. Comment by Atty Tydingco to add “psychologist.” Tabled for further discussion at working sessions.
  - § 7.28. Acquittal: Order for Civil Commitment. No change.
  - § 7.31. Acquittal: Verdict Must State Reason as Mental Disease Defect. Amend title as shown in Attachment 1, Slide 9.
    - Discussion: Non-substantive amendment to section title for clarification.
  - § 7.34. Acquittal: Court Order of Commitment or Release; Petition for Discharge.
    - Discussion: Non-substantive amendments citation clarification. Noted Compiler comment regarding possible unconstitutionality of subsections (c) and (f). Comment by Atty Tydingco regarding involuntary commitment under civil rules. Comparison to New Jersey statute. Tabled for further discussion at working sessions.
  - § 7.37. Mental Disease: a Bar to Proceeding or Sentence. Amend as shown in Attachment 1, Slide 15.
    - Discussion: Non-substantive typographical correction.
  - § 7.40. Same: Hearing to Determine. Amend as shown in Attachment 1, Slide 16.
    - Discussion: Non-substantive amendment to section title for clarification.
  - § 7.43. Same: Hearing Procedure for Commitment and Release. Amend as shown in Attachment 1, Slide 17.
    - Discussion: Non-substantive amendment to section title and citation clarification.
  - § 7.46. Same: Commitment as Exonerating Bail. Amend as shown in Attachment 1, Slide 19.
    - Discussion: Non-substantive amendment to section title and citation clarification.
  - § 7.49. Same: Hearing and Procedure When Mental Disease or Defect Occurs After Sentence. Amend as shown in Attachment 1, Slide 19.
    - Discussion: Non-substantive amendment to section title and citation clarifications.
  - § 7.52. Transfer of Committed Person Off-Island: Hearing and Notice to Attorney General Required. No change.
- Article 3 Defenses
  - § 7.55. Specific Defenses Defined and Allowed. Amend as shown in Attachment 1, Slide 21.
    - Discussion: Non-substantive amendment to section title for clarification. Section only addresses ignorance or mistake defenses. Compare to MPC 2.04.
  - § 7.58. Intoxication. No change.
  - § 7.61. Duress or Necessity. No change.
  - § 7.64. Other Defenses. Amend as shown in Attachment 1, Slide 24.
    - Discussion: Non-substantive amendment to section title for clarification. Section addresses only consent. Compare to MPC 2.11.
  - § 7.67. Appropriateness of Prosecution. Amend as shown in Attachment 1, Slide 25.

- Discussion: Non-substantive amendment to section title for clarification. Section addresses only de minimus infractions. Compare to MPC 2.12.
  - § 7.70. Entrapment as Affirmative Defense. Amend as shown in Attachment 1, Slide 26.
    - Discussion: Non-substantive amendment to section title for clarification. Section addresses only entrapment. Compare to 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 27.
    - Discussion: Non-substantive amendment to section title and citation clarification. Section only addresses renunciation.
- Article 4 Justification and Article 5 Castle Doctrine Act.
  - Discussion: Tabled for further discussion in working sessions for possible conflicts between these articles. Presented a report of findings of a ChatGPT comparison between Articles 4 and 5 as shown in Attachment 1, Slides 49-52.
- § 7.78. Justification a Defense; Civil Remedies Not Impaired by Article.
  - Discussion: Note possible error in the Cross Reference comment re § 85.22 Code of Criminal Procedure.

Chairman Quan called for a motion to accept the recommended changes except as noted after discussions. A motion was made and seconded. Without objection, the motion carried, and the recommendations moved to the final reading file.

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

Subcommittee Chair Attorney Phil Tydingco introduced Attorney William Bucky Brennan to give the presentation.

Attorney Brennan presented proposed revisions and recommendations for 9 GCA Chapters 34, 46, 70, and 10 GCA Chapter 60 in a PowerPoint presentation (Attachment 2).

Attorney Brennan noted offense grading recommendations previously presented in table form. Presented here are the actual changes to the statutes at the request of CLRC staff.

- 9 GCA Chapter 34 Arson, Negligent Burning, Criminal Mischief
  - § 34.50. Criminal Mischief; Defined. Amend as shown in Attachment 2, Slide 5.
    - Discussion: Amendments for consistency with recommended amendments to § 34.60.
  - § 34.60. Criminal Mischief; Punished. Amend as shown in Attachment 2, Slide 6 and as noted below.
    - Discussion: Subsection (a) removed to clarify that punishment is based on grading values. Subsection (b) grading values of offenses increased after review of other jurisdictions' grading values for criminal mischief;

and classification of “violation” as an offense removed. Subsection (c) language regarding mandatory minimums removed for uniformity with 9 GCA Chapter 80 (Disposition of Offenders).

Attorney Brennan stated this statute only has grading for offenses related to insurance fraud. Previous table reflects research of MPC and common law jurisdictions. Rather than a base misdemeanor criminal mischief crime aggravated by specific circumstances, propose grading solely by pecuniary loss caused or intended to be caused as reflected in amendments.

Atty Christine Tenorio raised concerns on the language “intended to be caused” as applied to the pecuniary loss. Attorneys Tydingco and Brennan agreed to strike “intended to be caused” throughout the section and submit to the Plenary Commission for voting.

Ex-officio member, Attorney Eggleston raised a concern that a defendant could have a reasonable belief that the property damaged was very low value and still be charged with a second degree felony. He supported the mens rea requirement for the amount of loss.

- 9 GCA Chapter 46 Forgery, Fraudulent Practices & Telephone Records
  - § 46.30. Issuance of Dishonored Checks. Amend (b) as shown in Attachment 2, Slide 7.
    - Discussion: Grading values of offenses increased and second degree of offense created. Comparisons made to other jurisdictions. Language regarding mandatory minimums removed for uniformity with 9 GCA Chapter 80 (Disposition of Offenders).
  - § 46.35. Fraudulent Use of Credit Cards; Defined & Punished. Amend (d) as shown in Attachment 2, Slide 8.
    - Discussion: Add offense levels and amend offense grading values.
  - § 46.80. Impersonation; Identity Theft; Defined & Punished. Amend (c) as shown in Attachment 2, Slide 9.
    - Discussion: Add offense levels and amend offense grading values.
  - §46.103. Classification of Offense. Amend as shown in Attachment 2, Slide 9.
    - Discussion: Mortgage fraud under \$1000 not likely. Remove grading offenses except second degree felony.
- 9 GCA Chapter 70 Miscellaneous Crimes Article 1 Protecting Animal Welfare and Safety (PAWS) Act (Pugua’s Law)
  - § 70.15. Definitions. Amend (j) as shown in Attachment 2, Slide 11.
    - Removal of injuries difficult to prove. Consistent with previous recommendations. No other subsections amended.
- 10 GCA Chapter 60 Firearms
  - § 60109. Concealed Firearms. Amend as shown in Attachment 2, Slide 13.
    - Discussion: Remove (a), the “exceptional cause” requirement has been found to be unconstitutional *See New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). Last sentence in (a) moved to remaining paragraph.
  - § 60110. Registration. Amend as shown in Attachment 2, Slide 14.
    - Discussion: Amendments to alleviate issues with military members registering firearms brought into Guam.
  - § 60110.1. Firearms. Amend as shown in Attachment 2, Slide 15.



- Discussion: Amendments for consistency with changes recommended for § 60110.

Chairman Quan noted the objection during discussions to the recommended change on §34.60 raised by non-voting ex-officio member, Attorney Eggleston. Chairman Quan then proceeded to call for the vote on each recommendation individually. Without objection all recommendations were moved to the final reading file.

**D. Notice of next meeting: Thursday, August 8, 2024, Noon (Tentative)**

Chairman Quan informed Members that the next Plenary meeting is tentatively scheduled for Thursday, August 8, 2024, at 12:00.

**VII. Communications**

None.

**VIII. Public Comment**

None.

**IX. Adjournment**

Chairman Quan adjourned the meeting without objection.

Respectfully submitted this 12<sup>th</sup> day of September, 2024.

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Andrew S. Quenga, Executive Director


As set out above, the minutes of the June 13, 2024, meeting were approved by the CLRC at the September 12, 2024 meeting.

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Magistrate Judge Jonathan R. Quan, Chairman

Date: \_\_\_\_\_

# ATTACHMENT 1 - SUBCOMMISSION ON CRIMINAL PROCEDURE PRESENTATION




**REPORT OF THE SUBCOMMISSION ON CRIMINAL PROCEDURE**

June 13 , 2024

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


Members: Hon. Anita A. Sukola (Chair), Atty Steven Coaty, Atty Brian Eggleston (ex-officio), Atty Lenny Rapadas (ex-officio), Executive Director Serge Quenga (ex-officio)

1



**Review of 9 GCA Chapter 7 Exemptions and Defenses**

2




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

3



**ARTICLE 2 – MENTAL RESPONSIBILITY**

**§ 7.16. Defense: Mental Disease or Defect. [No Change]**

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

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

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

**CRIM PRO COMMENT:** Non-substantive change to section title.

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: Non-substantive change to section title.**



**§ 7.25. Psychiatric Examination and Procedure. [No change, discussion]**

(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 or other qualified person (hereinafter referred to as psychiatrist) to examine the defendant and to report upon his mental condition.

(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 mental condition 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 psychiatrists or other experts to examine the defendant and to report upon his mental condition. 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 psychiatrists 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.

(e) On recommendation of the psychiatrists 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 psychiatrists or other experts appointed under this Section to have reasonable access to the defendant.



**§ 7.25. Continued.**

(f) Copies of any reports, records, documents or information furnished by either party to the psychiatrists appointed pursuant to this Section shall be given to the other party in the action. Any psychiatrist 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.

(g) Each psychiatrist 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 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 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; 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 psychiatrists 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 psychiatrist, but either party shall have the same right to object to questions asked by the court and the evidence adduced as though the psychiatrist were called by an adverse party. When the psychiatrist is called and examined by the court, the parties may cross-examine him in the order directed by the court. When called by either party to the action, any adverse party may examine him the same as in the case of any other witness.

(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

- (1) the nature of his examination,
- (2) his 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 was doing, or that he did not know and understand that his conduct was wrongful, or of the extent to which his capacity to control his 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 psychiatrist shall be permitted to make an explanation reasonably serving to clarify his diagnosis and opinion.



**§ 7.28. Acquittal: Order for Civil Commitment.** [No change]

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:** 10 GCA Chapter 82 is "Mentally Ill Persons." Covers involuntary hospitalization, certification for intensive treatment, judicial review, post certification for imminently dangerous persons, legal and civil rights of persons, conservatorship for gravely disabled persons, and voluntary hospitalization.

**§ 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:** Non-substantive change to section title.



**§ 7.34. Acquittal: Court Order of Commitment or Release; Petition for Discharge.** [Table for discussion]

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

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

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

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



**§ 7.34. Continued.**

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

(c) If, after at least ninety days from the commitment of any person to the custody of the Administrator, the Administrator is of the opinion that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others, the Administrator may apply to the court which committed the person for an order of discharge. The application shall be accompanied by a report setting forth the facts supporting the opinion of the Administrator. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.



**§ 7.34. Continued.**

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

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

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

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



§ 7.34. Continued.

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

**CRIM PRO COMMENT:** The old Compiler Note questions the constitutionality of (c) and (f):

“Note, however, that § 7.34 (c) and, possibly, § 7.34 (f) are of doubtful constitutionality since the Supreme Court has recently held, in a case from Maryland, that a person confined based upon an acquittal for reasons of mental disease, in a mental institution may not be confined for a term longer than the maximum sentence provided for the charge for which he was acquitted.”

Question is whether a person acquitted for insanity can be held longer than the sentence that may be imposed for the crime charged.



**COMPARE: NJSA 2C:4-8. Commitment of a Person by Reason of Insanity.**

a. After acquittal by reason of insanity, the court shall order that the defendant undergo a psychiatric examination by a psychiatrist of the prosecutor's choice. If the examination cannot take place because of the unwillingness of the defendant to participate, the court shall proceed as in section 2C:4-5c. The defendant, pursuant to this section, may also be examined by a psychiatrist of his own choice.

b. The court shall dispose of the defendant in the following manner:

(1) If the court finds that the defendant may be released without danger to the community or himself without supervision, the court shall so release the defendant; or

(2) If the court finds that the defendant may be released without danger to the community or to himself under supervision or under conditions, the court shall so order; or

(3) If the court finds that the defendant cannot be released with or without supervision or conditions without posing a danger to the community or to himself, it shall commit the defendant to a mental health facility approved for this purpose by the Commissioner of Human Services to be treated as a person civilly committed. In all proceedings conducted pursuant to this section and pursuant to section N.J.S.2C:4-6 concerning a defendant who lacks the fitness to proceed, including any periodic review proceeding, the prosecuting attorney shall have the right to appear and be heard. **The defendant's continued commitment, under the law governing civil commitment, shall be established by a preponderance of the evidence, during the maximum period of imprisonment that could have been imposed, as an ordinary term of imprisonment, for any charge on which the defendant has been acquitted by reason of insanity. Expiration of that maximum period of imprisonment shall be calculated by crediting the defendant with any time spent in confinement for the charge or charges on which the defendant has been acquitted by reason of insanity.**



§ 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 counsel.

**CRIM PRO COMMENT:** Typo correction only.



§ 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:** Non-substantive change to section title for consistency with previous section.



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

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

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

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

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

(e) Whenever, in the opinion of the Administrator or any officer designated in writing by him, the defendant regains his competency, the Administrator or such officer shall, in writing, certify that fact to the clerk of the court in which the proceedings are pending. Such certification, unless certified 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 Chapter 40 (commencing with § 40.10) of the Criminal Procedure Code.

Upon written request by the court or either party, filed with the clerk of the court and served upon the superintendent of the institution in which the defendant is or was confined, the superintendent shall file with the clerk of the court the defendant's complete medical records, or such portion thereof as is designated in the request, or a certified copy thereof, while at said institution.



§ 7.43. Continued.

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

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

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

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

**CRIM PRO COMMENT:** Non-substantive change to section title for consistency with previous section. Citation clarification.



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

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

**CRIM PRO COMMENT:** Non-substantive change to section title for consistency with previous section.

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

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



§ 7.52. ~~Transfer of Committed Person Off-Island: Hearing and Notice to Attorney General Required.~~ [No change]

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.



### 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

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

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

**CRIM PRO COMMENT:** Non-substantive change to section title. This section addresses only ignorance or mistake defense. Source, MPC 2.04, is entitled "Ignorance or Mistake."



#### § 7.58. Intoxication. [No change]

(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.



#### § 7.61. Duress or Necessity. [No change]

(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 bodily harm 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.



#### § 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:** Non-substantive change to section title. This section addresses only consent defense. Source, MPC 2.11, is entitled "Consent."



**§ 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:** Non-substantive change to section title. This section addresses only De Minimis Infractions defense. Source, MPC 2.12, is entitled "De Minimis Infractions."



**§ 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:** Non-substantive change to section title. This section addresses only entrapment defense. Source, MPC 2.13, is entitled "Entrapment."



**§ 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 change to section title. This section addresses only renunciation.



**ARTICLE 4 JUSTIFICATION [TABLE FOR DISCUSSION]**

**§ 7.76. Deadly Force Defined.**

Deadly force means force which a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Intentionally firing a firearm in the direction of another person or at a moving vehicle constitutes deadly force. A threat to cause death or serious bodily injury does not constitute deadly force, so long as the defendant's intent is limited to creating an apprehension that he will use deadly force if necessary.

**§ 7.78. Justification a Defense; Civil Remedies Not Impaired by Article.**

- (a) In a prosecution for an offense, justification as defined in this Article is a defense.
- (b) The fact that conduct is justifiable under this Article does not abolish or impair any remedy for such conduct which is available in any civil action.

**SOURCE:** \*M.P.C. § 3.01; Cal. § 605 (1971); Mass. ch. 263, § 32(a); N.J. § 2C:3-1.

**CROSS-REFERENCES:** § 7.55(c); § 85.22, Code of Criminal Procedure.

**COMMENT:** Subsection (a) of § 7.78 makes clear that justification is a defense, but not an "affirmative defense" and when raised as a defense and at trial the prosecution has the burden of disproving beyond a reasonable doubt.

Justification is not, as stated, an "affirmative defense" as provided in 8 GCA (Criminal Procedure) § 85.22. This is consistent with all of the sources above. The M.P.C. and N.J. referred to it as an "affirmative defense;" however, the term is used differently there than here. All four sources place the burden on the prosecution to disprove the defense.

Subsection (b) merely states that this Code, by creating certain justifications, does not affect or attempt to affect the civil liability of the actor. However, it is quite possible that the justifications described here are also justifications against civil liability.

**CRIM PRO COMMENT:** Reference to 8 GCA § 85.22 may be a typo, as this section does not exist in Title 8. Compiler has researched and confirmed.





**§ 7.80. Necessity Defined and Allowed.**

A person is justified in conduct which would otherwise constitute an offense when such conduct is immediately necessary to avoid an imminent public disaster or serious bodily injury to a person or serious damage to property which is about to occur through no fault of the defendant, and that harm which might reasonably be expected to result from such conduct is less than the harm which the defendant seeks to prevent.

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**§ 7.82. Execution of Public Duty Defined and Allowed.**

(a) Except as otherwise provided in Subsection (b), conduct is justifiable when it is required or authorized by:

- (1) the law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his duties;
- (2) the law governing the execution of legal process;
- (3) the judgment or order of a competent court;
- (4) the law governing the armed services or the lawful conduct of war; or
- (5) any other provision of law imposing a public duty.

(b) The other sections of this Article apply to:

- (1) the use of force upon or toward the person of another for any of the purposes dealt with in such sections; and
- (2) the use of deadly force for any purpose, unless the use of such force is otherwise expressly authorized by law or occurs in the lawful conduct of ward.

(c) The justification afforded by Subsection (a) applies:

- (1) when the defendant believes his conduct to be required or authorized by the judgment or direction of a competent court or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and
- (2) when the defendant believes his conduct to be required or authorized to assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority.

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**§ 7.84. Self-Defense Defined and Allowed.**

Except as otherwise provided by §§ 7.86 and 7.96, the use of force upon or toward another person is justifiable when the defendant believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

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**§ 7.86. Self-Defense Limited.**

(a) The use of force is not justifiable under § 7.84;

(1) To resist an arrest which the defendant knows is being made by a peace officer in the performance of his duties, although the arrest is unlawful; or

(2) to resist force used by the occupier or possessor of property or by another person on his behalf, where the defendant knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(A) the defendant is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest;

(B) the defendant has been unlawfully dispossessed of the property and is making a re-entry or recaption justified by § 7.90, or

(C) the defendant believes that such force is necessary to protect himself against death or serious bodily harm.

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§ 7.86. Continued.

(b) The use of deadly force is not justifiable under § 7.84 unless the defendant believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or rape or sodomy compelled by force or threat; nor is it justifiable if:

(1) the defendant, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or

(2) the defendant knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstains from any action which he has no duty to take, except that:

(A) the defendant is *not* obliged to retreat from his dwelling, place of work or vehicle, *unless* he was the initial aggressor or is assailed in his place of work by another person whose place of work the defendant knows it to be; and

(B) a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

(c) Except as otherwise required by Subsections (a) and (b), a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.



§ 7.88. Force in Defense of Third Persons: Defined and Allowed.

(a) Except as otherwise provided by this Section and § 7.96, the use of force upon or toward the person of another is justifiable to protect a third person when:

(1) the defendant would be justified under § 7.84 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect;

(2) under the circumstances as the defendant believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(3) the defendant believes that his intervention is necessary for the protection of such other person.

(b) Notwithstanding Subsection (a):

(1) when the defendant would be obliged under Paragraph (2) of Subsection (b) of § 7.86(b)(2) to retreat or take other action, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person;

(2) when the person whom the defendant seeks to protect would be obliged under Paragraph (2) of Subsection (b) of § 7.86(b)(2) to retreat or take similar action if he knew that he could obtain complete safety by so doing, the defendant is obliged to try to cause him to do so before using force in his protection if the defendant knows that he can obtain complete safety in that way; and

(3) neither the defendant nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in his own.

CRIM PRO COMMENT: Citation clarifications.



§ 7.90. Force in Defense of Property: Defined and Allowed.

(a) Except as otherwise provided by this Section and § 7.96, the use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary:

(1) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property, provided that such land or movable property is, or is believed by the defendant to be, in his possession or in the possession of another person for whose protection he acts; or

(2) to effect an entry or re-entry upon land or to retake tangible movable property, provided that the defendant believes that he or the person by whose authority he acts is entitled to possession, and the force is used immediately or on fresh pursuit after such dispossession.

(b) For the purposes of Subsection (a):

(1) person who has parted with the custody of property to another who refuses to restore it to him is no longer in possession, unless the property is movable and was and still is located on land in his possession;

(2) a person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim of right.



§ 7.90. Continued.

(c) The use of force is justifiable under this Section only if the defendant first request the person against whom such force is used to desist from his interference with the property, unless the defendant believes that:

(1) such request would be useless;

(2) it would be dangerous to himself or another person to make the requests; or

(3) substantial harm will be done to the physical condition of the property which is sought to be protected before the requests can effectively be made.

(d) The use of force to prevent or terminate a trespass is not justifiable under this Section if the defendant knows that the exclusion of the trespasser will expose the trespasser to substantial danger of serious bodily harm.

(e) The use of force to prevent an entry or re-entry upon land or the recaption of movable property is not justifiable under this Section, although the defendant believes that such re-entry or recaption is unlawful, if:

(1) the re-entry or recaption is made by or on behalf of a person who was actually dispossessed of the property; and

(2) it is otherwise justifiable under Paragraph (2) of Subsection (a)(2).

(f) The use of deadly force is not justifiable under this Section unless the defendant believes that:

(1) the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or

(2) the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:

(A) has employed or threatened deadly force against or in the presence of the defendant; or

(B) the use of force other than deadly force to prevent the commission or the consummation of the crime would expose the defendant or another in his presence to substantial danger of serious bodily harm.

CRIM PRO COMMENT: Citation clarifications.



**§ 7.92. Use of Force in Law Enforcement.**

(a) Except as otherwise provided by this Section and § 7.96, the use of force upon or toward the person of another is justifiable when the defendant is making or assisting in making an arrest and the defendant believes that such force is immediately necessary to effect a lawful arrest.

(b) The use of force is not justifiable under this Section unless:

(1) the defendant makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(2) when the arrest is made under a warrant, the warrant is valid or believed by the defendant to be valid.

(c) The use of deadly force is not justifiable under this Section unless:

(1) the arrest is for a felony;

(2) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer;

(3) the defendant believes that the force employed creates no substantial risk of injury to innocent persons; and

(4) the defendant believes that:

(A) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(B) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.



**§ 7.92. Continued.**

(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of person charged with or convicted of a crime.

(e) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful.

(f) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that (1) he believes that the arrest is lawful (2) the arrest would be lawful if the facts were as he believes them to be.



**§ 7.92. Continued.**

(g) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

(1) any limitations imposed by the other provision of this Article on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(2) the use of deadly force is not in any event justifiable under this Subsection unless:

(A) the defendant believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

(B) the defendant believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.



**§ 7.94. Use of Force by Person Having Special Care, Duty or Responsibility for Another.**

The use of force upon another person is justified under any of the following circumstances:

(a) a parent, guardian or other person responsible for the care and supervision of a minor less than eighteen years of age, or a person acting at the direction of such person, may use necessary force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct. The force used for this purpose must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;

(b) a teacher or a person otherwise responsible for the care and supervision of a minor less than eighteen years of age for a special purpose, or a person acting at the direction of such person, may use necessary force upon any such minor who is disruptive or disorderly for the purpose of maintaining order, restraining that minor or removing him from the place of disturbance. The force used for these purposes must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;

(c) a guardian or other person responsible for the care and supervision of an incompetent person or a person acting at the direction of the guardian or responsible person, may use necessary force upon the incompetent person for the purpose of safeguarding or promoting his welfare, including the prevention of his misconduct or, when he is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution. The force used for these purposes must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;



**§ 7.94. Continued.**

(d) a person responsible for the maintenance of order in a vehicle, vessel, aircraft, or other carrier, or in a place where others are assembled, or a person acting at the responsible person's direction, may use necessary force to maintain order;

(e) a duly licensed physician, or a person acting at his direction, may use necessary force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered: (1) with the consent of the patient, or if the patient is a minor less than sixteen years of age, or an incompetent person, with the consent of his parent or guardian or other person entrusted with his care and supervision; or (2) in an emergency, if the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerns for the welfare of the patient would consent.



**§ 7.96. When Force Allowed by §§ 7.94 & 7.96 is Unavailable.**

(a) The justification afforded by §§ 7.84 to 7.92, inclusive, is unavailable when:

(1) the defendant's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

(2) his error is due to ignorance or mistake as to the provisions of this Code, any other provision of the criminal law or the law governing the legality of an arrest or search.

(b) When the defendant believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under §§ 7.82 to 7.94 but the defendant is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those Sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(c) When the defendant is justified under §§ 7.84 to 7.94 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk or injury to innocent persons, the justification afforded by those Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.



**§ 7.98. Justification in Seizure of Property.**

Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense of privilege in a civil action based thereon, unless:

(a) the Code or the law defining the offense deal with the specific situation involved; or

(b) a legislative purpose to exclude the justification claimed otherwise plainly appears.



**ARTICLE 5- CASTLE DOCTRINE ACT**

**§ 7.111. Legislative Findings and Intent.**

*I Liheslaturan Guåhan* finds that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action from acting in defense of themselves and others.

*I Liheslatura* further finds that the "Castle Doctrine" is a common-law doctrine of ancient origins that declares that a person's home is his or her castle.

*I Liheslatura* further finds that persons residing in or visiting Guam have a right to remain safe.

Therefore, it is the intent of *I Liheslatura* that no person or victim of crime should be required to surrender his or her personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.



**§ 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.

(b) The presumption set forth in Subsection (a) *does not* apply if:

(1) the person against whom the defensive force is used has the right to be in or is a lawful resident of the business, residence, or vehicle, such as an owner, lessee, or titleholder, and there is *not* an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(2) the person who uses defensive force is engaged in a criminal activity or is using the business, residence, or occupied vehicle to further a criminal activity; or

(3) the person against whom defensive force is used is a uniformed law enforcement officer who enters or attempts to enter a habitable property, residence, or vehicle in the performance of his or her official duties, and the officer identified himself or herself in accordance with applicable law, or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.



**§ 7.112. Continued.**

(c) A person who unlawfully and by force enters or attempts to enter a person's business, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(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.

Habitable property, as used in this Section, *does not* include yards or 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 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 in which a person resides, either temporarily or permanently, or is visiting as an invited guest.

(4) *vehicle* is defined in § 1102 and § 5101 of Title 16, GCA.

(5) *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.



**§ 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).



**§ 7.114. Severability.**

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



### Article 4 and 5 Comparison Using ChatGPT

- **Scope:**
  - Article 4 deals broadly with the use of force in self-defense, defense of others, defense of property, and law enforcement scenarios, providing detailed limitations and conditions under which force may be justified.
  - Article 5 specifically focuses on the "Castle Doctrine," emphasizing the right to use defensive force, including deadly force, in one's home, business, or vehicle without the duty to retreat.
- **Duty to Retreat:**
  - Article 4 includes a duty to retreat when safe to do so, except in one's own dwelling or place of work under specific conditions.
  - Article 5 explicitly states that there is no duty to retreat when in a residence, business, or vehicle if faced with an unlawful and forcible entry.
- **Legal Protections:**
  - Article 4 allows justification as a defense but does not preclude civil remedies for justified conduct.
  - Article 5 provides immunity from both criminal prosecution and civil actions for those using force as permitted under the act, with specific exceptions.

In summary, Article 4 provides a comprehensive framework for the use of force in various contexts, while Article 5 focuses on enhancing the legal protection of individuals using force in their homes, businesses, or vehicles under the Castle Doctrine.

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### DIFFERENCES

The key differences between Article 4 (Justification) and Article 5 (Castle Doctrine) are rooted in their definitions and applications of legal principles related to the use of force and self-defense.

#### Article 4: Justification

1. **Scope and Purpose:**
  - Article 4 covers a broad range of justifications for the use of force, including self-defense, defense of others, and defense of property. It is designed to provide legal justifications for actions that would otherwise be considered criminal.
2. **General Self-Defense:**
  - Self-defense is justified when the individual believes that the use of force is immediately necessary to protect themselves against unlawful force. This includes provisions for the use of deadly force under certain circumstances.
3. **Limitations:**
  - Justification is not available if the person knows they can avoid the necessity of using force with complete safety by retreating, except when in their dwelling or place of work unless they were the initial aggressor.
  - The use of force is also limited in cases of resisting unlawful arrest or when the individual provokes the use of force.
4. **Civil Remedies:**
  - The fact that conduct is justifiable under this article does not abolish or impair any remedy for such conduct which is available in any civil action.
5. **Necessity and Execution of Public Duty:**
  - Actions are justified if they are immediately necessary to avoid imminent harm and are done in the lawful execution of public duties or to assist public officers.

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### DIFFERENCES (Continued)

#### Article 5: Castle Doctrine

1. **Scope and Purpose:**
  - The Castle Doctrine specifically focuses on the right of individuals to use force, including deadly force, to defend themselves within their home, vehicle, or place of business. It is narrower in scope compared to Article 4 and centers on the principle that one's home is their castle.
2. **Presumption of Fear:**
  - The Castle Doctrine often includes a presumption that an intruder entering a person's home is there to cause harm, thus justifying the use of deadly force without a duty to retreat. This presumption does not typically exist in broader justification defenses.
3. **No Duty to Retreat:**
  - One of the central tenets of the Castle Doctrine is that there is no duty to retreat when an individual is in their own home, vehicle, or workplace. This contrasts with Article 4, which requires retreat if it can be done safely, except in specific locations.
4. **Legal Protections:**
  - The Castle Doctrine provides strong legal protections for individuals using force in their home, often including immunity from civil and criminal liability, which may be more extensive than the protections offered under general justification laws.
5. **Application and Misapplication:**
  - The Castle Doctrine is primarily applied in scenarios involving intrusions into one's home or property, whereas Article 4's justification can apply in a wider array of circumstances, including public spaces and situations involving defense of others.

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### Summary

- Article 4 (Justification) offers a broad legal framework for justifying the use of force in various situations, including self-defense, defense of others, and property, with significant limitations and requirements for retreat and civil liability considerations.

- Article 5 (Castle Doctrine) specifically addresses the right to defend one's home, vehicle, or workplace with no duty to retreat, providing strong presumptions and legal protections against civil and criminal charges in such scenarios.

These differences reflect the varying philosophies and legal traditions surrounding self-defense and the protection of one's home and personal space.


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TABLE OF AMENDMENTS, REPEALS, NO CHANGES

| Subcommission on Criminal Procedure |         |           |       |        |       |
|-------------------------------------|---------|-----------|-------|--------|-------|
| Chapter number, name                | Section | No-Change | AMEND | REPEAL | TABLE |
| 7- Exemptions and Defenses          |         |           |       |        |       |
| Article 1 - Exemptions              | 7.10    |           | Amend |        |       |
| Article 2 - Mental Responsibilities | 7.16    | No-Change |       |        |       |
|                                     | 7.19    |           | Amend |        |       |
|                                     | 7.22    |           | Amend |        |       |
|                                     | 7.25    | No-Change |       |        |       |
|                                     | 7.28    | No-Change |       |        |       |
|                                     | 7.31    |           | Amend |        |       |
|                                     | 7.34    |           |       |        | Table |
|                                     | 7.37    | No-Change |       |        |       |
|                                     | 7.40    |           | Amend |        |       |
|                                     | 7.43    |           | Amend |        |       |
|                                     | 7.46    |           | Amend |        |       |
|                                     | 7.49    |           | Amend |        |       |
|                                     | 7.52    | No-Change |       |        |       |
| Article 3 - Defenses                | 7.55    |           | Amend |        |       |
|                                     | 7.58    | No-Change |       |        |       |
|                                     | 7.61    | No-Change |       |        |       |
|                                     | 7.64    |           | Amend |        |       |
|                                     | 7.67    |           | Amend |        |       |
|                                     | 7.70    |           | Amend |        |       |
|                                     | 7.73    |           | Amend |        |       |
| Article 4 - Justification           |         |           |       |        | Table |
| Article 5 - Castle Doctrine Act     |         |           |       |        | Table |

# ATTACHMENT 2 - SUBCOMMISSION ON CRIMES RELATING TO PROPERTY PRESENTATION




**REPORT OF THE SUBCOMMISSION ON CRIMES RELATING TO PROPERTY**

June 13, 2024

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

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

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**Preliminary Review Completed (by Chapter)**

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

**Chapters Remaining**

- 9 GCA Chapter 4 (General Principles of Liability)
- 9 GCA Chapter 13 (Attempt, Solicitation, Conspiracy)
- 9 GCA Chapter 49 (Government Bribery, Other Unlawful Influence and Related Offenses)
- 9 GCA Chapter 69 (Antitrust Law)


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**Items for Today**

- Offense Grading Recommendations from August 31, 2023 and February 29, 2024 Meeting
- 10 GCA Chapter 60 Recommendations

3



**Offense Grading Updates to Statutes**

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## 9 GCA Chapter § 34.50 (Criminal Mischief Grading)

A Person commits criminal mischief if:

- ~~(a) under circumstances not amounting to arson he damages or destroys property with the intention of defrauding an insurer; or~~
- ~~(b) he intentionally tampers with the property of another or forest land and thereby:
 
  - ~~(1) recklessly endangers human life; or~~
  - ~~(2) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or~~~~
- ~~(c) he intentionally damages the property of another or forest land; or~~
- ~~(d) he intentionally damages the motor vehicle of another.~~

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## 9 GCA Section 34.60 (Criminal Mischief Grading)

- ~~(a) A violation of subsections (b) or (d) of § 34.50 is a third degree felony.~~
- ~~(b) A violation of subsection (a) of § 34.50 is a second degree felony if the defendant's conduct causes or is intended to cause pecuniary loss of Five Thousand Dollars (\$5,000.00) or more, a third degree felony if the defendant's conduct causes or is intended to cause pecuniary loss of Two Thousand Five Hundred Dollars (\$2,500.00) or more, but less than Five Thousand Dollars (\$5,000.00) in excess of Five Hundred Dollars (\$500.00), a misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss of Five Hundred Dollars (\$500) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00) in excess of Fifty Dollars (\$50.00), and a petty misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss of less than Five Hundred Dollars (\$500.00), in excess of Twenty-four Dollars (\$24.00). Otherwise, criminal mischief is a violation.~~

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

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

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

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

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## 9 GCA Section 46.30 (Issuance of Dishonored Checks)

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

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

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

(B) guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by payment of a fine of not more than \$2,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (2), is equal to or more than Five Hundred Dollars (\$500) but less than Two Thousand Five Hundred Dollars (\$2,500.00) \$750, but not more than \$1000; or

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

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

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## 9 GCA Chapter 46.35(d) (Fraudulent Use of Credit Cards; Defined and Punished)

(d) An offense under this Section is:

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

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

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

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

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## 9 GCA Section 46.80(c) Impersonation; Identity Theft; Defined and Punished.

(c) An offense under this Section is:

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

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

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

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

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## 9 GCA Chapter 46.103 (Classification of Offense *Mortgage Fraud*)

(a) Notwithstanding any other administrative, civil, or criminal penalties, a person who violates § 46.102 of this Chapter is guilty of a:

~~(1) misdemeanor when the value is or exceeds Three Hundred Dollars (\$300) but is less than One Thousand Dollars (\$1,000);~~

~~(2) third degree felony when the value is or exceeds One Thousand Dollars (\$1,000) but is less than Five Thousand Dollars (\$5,000);~~

~~(3) second degree felony, when the value is or exceeds Five Thousand Dollars (\$5,000);~~

~~(4) second degree felony when the object or purpose of the commission of an act of mortgage fraud is other than the obtaining of something of monetary value; and~~

~~(5) second degree felony when the object or purpose of the commission of an act of mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the value.~~

~~(6) The determination of the degree of any offense under this Subsection (a) is measured by the total value of all property, money, or things obtained or sought to be obtained by a violation of § 46.102 of this Chapter, except as provided in Subsections (a)(4) and (5).~~

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

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## 9 GCA § 70.15(j)

70.15(j) Physical injury means physical trauma, impairment of condition, or pain or illness produced by violence or by a thermal or chemical agent, ~~and includes, but is not limited to, starvation, dehydration, hypothermia, hyperthermia, muscle atrophy, restriction of blood flow to a limb or organ, mange or other skin disease, or parasitic infestation~~.

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## Title 10 Chapter 60 Firearms

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET AL. v. BRUEN, SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL. 142 S. Ct. 2111 (2022)

*From Syllabus:*

The State of New York makes it a crime to possess a firearm without a license, whether inside or outside the home. An individual who wants to carry a firearm outside his home may obtain an unrestricted license to "have and carry" a concealed "pistol or revolver" if he can prove that "proper cause exists" for doing so. N. Y. Penal Law Ann. §400.00(2)(f). An applicant satisfies the "proper cause" requirement only if he can "demonstrate a special need for self-protection distinguishable from that of the general community."

Held: New York's proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense

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## 10 GCA § 60109

No identification card shall be issued permitting the holder to carry a concealed firearm of any nature unless:

~~(a) the applicant shows exceptional cause therefore. Such exceptional causes shall include, but not be limited to, facts which show that such concealment is absolutely necessary for an individual who is engaged in the protection of persons or property, or who shows that he has a genuine reason to fear for the safety of his person or property and that a concealed firearm would materially lessen the danger. Such permission, once stated upon the identification card, shall not be renewed unless, at the time for renewal, the application shows a continuing need for such permission, using the standards for such permission as they exist at the time for renewal. It shall be unlawful for any person to carry any firearm concealed unless he has received permission to carry such firearm and such permission is stated upon the face of his identification card, or~~

~~(b) an applicant meets the requirements for a concealed firearms license as defined in §60109.1 of this Chapter. It shall be unlawful for any person to carry any firearm concealed unless he has received permission in accordance with the provisions of this Chapter to carry such firearm and such permission is stated upon the face of his identification card~~

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## 10 GCA § 60110 (Registration)

Any person purchasing, receiving by gift, device or otherwise, acquiring or otherwise coming into permanent possession of a firearm, the possession of which is permitted by this chapter, shall register the same with the Department within ~~three (3) five (5)~~ working days after acquiring said firearm on the forms specified by the Department provided however any member of the United States Coast Guard or any Armed Forces of the United States arriving in Guam for a permanent change of station ("PCS"), or a dependent of the same, shall have 180 days from the arrival of the firearm(s) with their household goods to register such firearm(s). Failure to register shall result in a civil fine of \$10.00 per day that the firearm is unregistered, in addition to the other penalties provided in this chapter. Any such fines shall be paid to the Treasurer of Guam for the account of the Department of Revenue and Taxation. Such facts and information shall be given so as to enable the Department to record for identification purposes the firearm so registered. It shall be unlawful for any person to own or possess any firearm which has not been registered. No firearm may be registered by the Department unless the person presenting the firearm also displays current identification card evidencing his eligibility to own, possess, use or carry the firearm presented for inspection as to the facts required for registration. Any firearm registration which expires on or after March 1, 1988 or which is thereafter issued under this chapter shall be permanent for as long as the registrant retains the firearm. The Chief of Police shall promulgate rules and regulations establishing a permanent firearms identification card and a reasonable fee to cover the cost incurred.

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## 10 GCA § 60110.1 (Firearms )

A grace period for payment of fees due for renewal of registration or for new registration for a firearm for any member of the United States Coast Guard or any Armed Forces of the United States including but not limited to the Guam National Guard or Reserves or a dependent of a member of the same of the Guam national Guard or Reserves, shall be in effect while that member is on active service outside Guam and for the next one hundred eighty (180) days after completion of such service. No interest or penalties shall be assessed for any period prior to expiration of the one hundred eighty (180) days.

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## Table of Amendments, Repeals, No Changes

| Subcommission on Crimes Relating to Property |          |           |       |        |                   |
|--|----------|-----------|-------|--------|-------------------|
| Chapter number, name                         | Section  | No-Change | AMEND | REPEAL | REPEAL & RE-ENACT |
| Chapter 34                                   | 34.50    |           | Amend |        |                   |
|  | 34.60    |           | Amend |        |                   |
| Chapter 46                                   | 46.30    |           | Amend |        |                   |
|  | 46.35    |           | Amend |        |                   |
|  | 46.80    |           | Amend |        |                   |
|  | 46.103   |           | Amend |        |                   |
| Chapter 70                                   | 70.15    |           | Amend |        |                   |
|  |          |           |       |        |                   |
| Title 10 Chapter 60                          | 60.109   |           | Amend |        |                   |
|  | 60.110   |           | Amend |        |                   |
|  | 60.110.1 |           | Amend |        |                   |

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GUAM CRIMINAL LAW AND PROCEDURE  
REVIEW COMMISSION

PLENARY MEETING  
SEPTEMBER 12, 2024  
12:00 NOON

POWERPOINT PRESENTATION



# GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION

PLENARY MEETING  
SEPTEMBER 12, 2024  
12:00 NOON



## AGENDA

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES JUNE 13, 2024
- V. OLD BUSINESS
  - A. Subcommission Status Update and Report of the Executive Director
- VI. NEW BUSINESS
  - A. Subcommission on Drugs & Other Criminal Offenses: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - B. Subcommission on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - C. Subcommission on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - D. Notice of Next Meeting
- VII. COMMUNICATIONS
- VIII. PUBLIC COMMENT
- IX. ADJOURNMENT



# SUBCOMMISSION STATUS UPDATE REPORT OF EXECUTIVE DIRECTOR



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

September 12 , 2024

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

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



## Crimes Against Persons Subcommittee 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  
PERSONS SUBCOMM'N

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## Overview

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

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

Sep. 12, 2024

PLENARY MEETING, CRIMES AGAINST  
PERSONS SUBCOMM'N

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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.<br>Tabled §§ 93.20, 93.30, 93.35, 93.50. | Pending final, formal subcomm’n action regarding §§ 93.20, 93.30, 93.35, 93.50.<br><br>All other sections; no changes recommended. |
| 89      | <b>CRIMES AGAINST MINORS AND SEX OFFENDER REGISTRY</b>           | Completed first pass.<br>Tabled §§ 89.06, 89.08, 89.03.        | Pending final, formal subcommission action regarding §§ 89.06, 89.08, 89.03.<br><br>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.<br>Tabled §§ 31.65 and 31.70. | Amend § 31.30 to clarify elements and remove ambiguous terms.<br><br>Pending action on §§ 31.65, 31.70.<br><br>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.<br><br>Amend § 26.41 to read “any person who knowingly publishes ...”<br><br>All other sections; no changes recommended. |

Sep. 12, 2024

PLENARY MEETING, CRIMES AGAINST PERSONS SUBCOMM'N

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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.<br>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.<br><br>Amend § 25A103 by striking (a) 1 (B) because it is redundant and included in (a) 1 (A); same for §§ 25A104, 25A105.<br><br>Pending action on amendment to statute to include anus as a genital.<br><br>All other sections; no changes recommended. |

Sep. 12, 2024

PLENARY MEETING, CRIMES AGAINST PERSONS SUBCOMM'N

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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> |



# 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.  |



# 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

(C) 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.

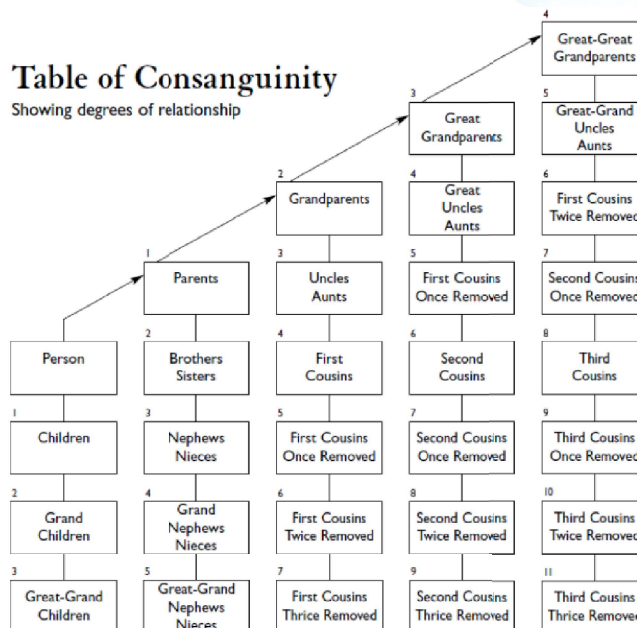
(13) Consanguinity, or relationship by blood ("related by blood") as used in this Chapter means relationship between persons arising by descent from a common ancestor" or a relationship "by birth rather than by marriage. The degree of consanguinity is determined by counting upward from one of the persons 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)

**Table of Consanguinity**

Showing degrees of relationship





## 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**

Sep. 12, 2024

PLENARY MEETING, CRIMES AGAINST  
PERSONS SUBCOMM'N

25



**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.

Sep. 12, 2024

PLENARY MEETING, CRIMES AGAINST  
PERSONS SUBCOMM'N

26



## 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!*



## 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.

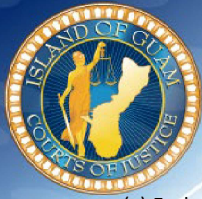
(d) The qualified psychiatrists, licensed psychologists and other experts appointed by the court and those called by the prosecuting attorney shall be allowed, in addition to their actual traveling expenses, such fees as in the discretion of the court seem reasonable.



### § 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.**





# Notice of Next Meeting

Thursday, November 7, 2024, Noon

(Tentative)



## Agenda

- I. CALL TO ORDER
- II. PROOF OF DUE NOTICE OF MEETING
- III. DETERMINATION OF QUORUM
- IV. DISPOSAL OF MINUTES    JUNE 13, 2024
- V. OLD BUSINESS
  - A. Subcommission Status Update and Report of the Executive Director
- VI. NEW BUSINESS
  - A. Subcommission on Drugs & Other Criminal Offenses: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - B. Subcommission on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - C. Subcommission on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval
  - D. Notice of Next Meeting
- VII. COMMUNICATIONS
- VIII. PUBLIC COMMENT
- IX. ADJOURNMENT