

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION
2024 FIRST QUARTER REPORT**

SUBMITTED TO THE
I MAGA'HÅGAN GUÅHAN,
SPEAKER OF THE GUAM LEGISLATURE, AND
CHIEF JUSTICE OF GUAM
MAY 7, 2024

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION
JUDICIARY OF GUAM
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PREFACE

The Guam Criminal Law and Procedure Review Commission (CLRC or Commission) submits its fourth quarterly report summarizing its activities as required by 1 GCA § 25.07(a). Because the CLRC began operations in January of 2023, quarterly reports are based on the calendar year, rather than the fiscal year. This first quarter report summarizes activities from January 1, 2024 through March 31, 2024.

CLRC STATUTORY AUTHORITY

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

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

CLRC STAFF AND MEMBERS (updated)

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

SIGNIFICANT CLRC ACTIVITIES JANUARY – MARCH 2024

1. During the first quarter, the Commission convened a Plenary Meeting on February 29, 2024. Members deliberated on various agenda items, including recommendations to amend sections and chapters of the Criminal Code of Guam. The agenda, approved minutes, meeting packet and YouTube video link for this meeting are available on the CLRC website.

During February 29, 2024 Plenary Meeting, the following presentations were made:

- Subcommittee on Drugs & Other Criminal Offenses proposed a new 9 GCA § 90106 entitled to establish medical, dental and mental health clinics at the Department of Corrections. Attachment 1.
- Subcommittee on Crimes Relating to Property continued the discussions of offense grading recommendations from the August 2023 Plenary Meeting, covering sections from 9 GCA Chapters 32, 34, 43, 46, and 70 and presented recommended changes to these chapters. Attachment 2.
- Subcommittee on Crimes Against Persons presented its review of 9 GCA Chapters 40, 71, 91, 93, and 9 GCA § 31.30. Attachment 3.


All recommendations that were approved first quarter for moving to the final reading file or tabled for further discussion are memorialized in **Attachments 1A to 1C** hereto, which includes proposed amendments with changes tracked.

2. During the first quarter, subcommittees continued their review of statutes during working session meetings or by independent member review during the months of January to April, 2024.


All recommendations approved at Plenary Meetings are subject to further review. Sections and chapters tabled will be presented at a subsequent Plenary Meeting.

CONCLUSION

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



Magistrate Judge Jonathan R. Quan
Chairman



Andrew Serge Quenga
Executive Director

ATTACHMENT 1
PLENARY MEETING OF FEBRUARY 29, 2024
RECOMMENDATIONS OF THE
SUBCOMMISSION ON DRUGS & OTHER CRIMINAL OFFENSES

- **RECOMMENDATION TO ADD A NEW 9 GCA § 90106:**

§ 90106. Correctional Medical Clinics.

There are hereby established facilities within the Department of Corrections (DOC) designated as the “Correctional Medical and Dental Clinic” and the “Correctional Behavioral Health Clinic” to address and respond to the medical, dental and mental health needs of all inmates and detainees within the prison population based on standards and procedures recognized by the National Commission on Correctional Health Care and consistent with community standards of care to further ensure the constitutional rights of inmates and detainees to proper health care.

(a) All outpatient medical and dental clinical operations at the DOC Correctional Medical Clinic shall be under the general cognizance and authority of the Guam Memorial Hospital Authority (GMHA) to ensure delivery of services including, but not limited to providing a medical director; physician and nurse practitioner services; nursing services; clinic staff; pharmaceutical services; medical records services; medical supplies; and training, to the extent necessary to satisfy this section those services set forth in any cooperative agreement between GMHA and DOC.

(b) All outpatient mental health services operations at the DOC Correctional Behavioral Health Clinic shall be under the general cognizance and authority of Guam Behavioral Health & Wellness Center (GBHWC) to ensure delivery of services including, but not limited to providing a mental health director, psychiatric physician and clinical psychology services, nursing services; clinic staff; records services; supplies; and training, to the extent necessary to satisfy this section those services as may be set forth in any cooperative agreement between GBHWC and DOC.

(c) The DOC, GMHA, and GBHWC shall annually submit sufficient budgetary justification and appropriation requests to fund all operations pursuant to any continuing cooperative agreements between the DOC and GMHA.

(d) DOC and GBHWC. GMHA and GBHWC shall deliver health care services at the Correctional Medical Clinic and Correctional Behavioral Health Clinic, respectively, at the most economical costs, implement best practices, and promote financial accountability to DOC.

(1) GMHA and GBHWC shall provide written reports to DOC one month after each fiscal quarter detailing services rendered and supplies used during the previous quarter, including applicable costs and administrative fees. The system for payment by DOC to GMHA and GBHWC shall be established with the Governor’s Office, the Bureau of Budget Management & Research (BBMR), and the Department of Administration (DOA) to ensure GMHA and GBHWC has a regular commitment of

funding secured solely and exclusively for paying GMHA and GBHWC on time for health care services, medical supplies, and for the timely payment to pharmaceutical vendors to prevent any future risks of credit hold.

(2) Allotments shall be made to GMHA and GBHWC in advance of services rendered and medical and pharmaceutical supplies, based on the previous fiscal year budget, and adjusted for any under-utilization or over-utilization from the previous fiscal year. Quarterly allotments shall be released on October, January 1, April 1, and July 1, of each fiscal year.

(3) GMHA and GBHWC shall submit to DOC expenditures statements post fiscal year that certify funds were spent in accordance with actual allocations.

CLRC COMMENT: This section was proposed by the CLRC Subcommittee on Drug & Other Criminal Offenses under the direction of its former Chair, the Honorable Elizabeth Barrett-Anderson (Attorney General of Guam (2015-2019 and 1987-1994), Judge of the Superior Court of Guam (1998-2102), and Senator of the 23rd and 24th Guam Legislatures), to statutorily mandate the establishment of medical, dental and mental health clinics within the Department of Corrections. In 1991, during her first term as Attorney General, the conditions of the Adult Correctional Facility, the Rosario Detention Facility and the Department of Mental Health and Substance Abuse Adult Inpatient Unit was addressed in a settlement agreement and consent decree reached in District Court of Guam Case No. CIV91-00020, wherein the United States sued the Government of Guam. This consent decree was dismissed by the District Court in 2017, during then-Attorney General Barrett-Anderson's second term, and the settlement agreement provided the Government of Guam would provide inmates and detainees with adequate access to medical, dental, and mental health care. This new section on Correctional Medical Clinics will codify and make permanent the medical clinics currently in operation at the Department of Corrections, including the Behavior Health and Wellness Center Annex established there by Executive Order No 2020-21.

ATTACHMENT 2
PLENARY MEETING OF FEBRUARY 29, 2024
RECOMMENDATIONS OF THE
SUBCOMMISSION ON CRIMES RELATING TO PROPERTY

- **RECOMMENDATION TO INCREASE OFFENSE GRADING VALUES FOR CRIMINAL MISCHIEF AND AMEND 9 GCA § 34.60 AS FOLLOWS.**

§ 34.60. Criminal Mischief; Punished.

~~(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 Twenty-Five Hundred Dollars (\$2500.00) or more 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 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 (c), 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 repaint 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.

~~(d) The court may order that any person punished under § 34.60(c) or § 34.70, Title 9, Guam Code Annotated, 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.

CLRC COMMENT: 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.

- **RECOMMENDATION TO INCREASE OFFENSE GRADING VALUES FOR THEFT AND AMEND 9 GCA § 43.20 AS FOLLOWS.**

§ 43.20. Theft; Defined & Punishment Classified.

(a) *Theft* constitutes a felony of the second degree if the amount involved is Five Thousand Dollars (\$5000.00) or more ~~exceeds One Thousand Five Hundred Dollars (\$1,500)~~ or if the property stolen is a bus, truck, automobile, aircraft, motorcycle, or motor boat, or in the case of theft by receiving stolen property, if the defendant is in the business of buying and selling stolen property. In the case of theft as a felony of the second degree, the court shall impose a sentence of imprisonment of a minimum term of five (5) years and may impose a maximum term of up to ten (10) years; the minimum term imposed shall not be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment provided, however, that in the case of an offender not previously convicted of a felony or of an offense constituting theft, the court may sentence the offender to not more than five (5) years imprisonment and the provisions of this subsection prohibiting probation, suspension, parole, or work release shall not be applicable to such offender.

(b) Theft constitutes a felony of the third degree if the amount involved is Twenty-Five Hundred Dollars (\$2500.00) or more ~~less than One Thousand Five Hundred Dollars (\$1,500.00) but exceeds Five Hundred Dollars (\$500.00)~~ or if the property stolen is a firearm or motorized vehicle other than those set forth in Subsection (a) of this Section, or if the theft is through an unauthorized electrical connection

(c) Theft not constituting a felony of the second or third degree is a misdemeanor if the amount involved is Five Hundred Dollars (\$500.00) or more ~~exceeds Fifty Dollars (\$50)~~ or if the property stolen is a credit card or if the property was taken from the person or by extortion.

(d) Theft not constituting a felony of the second or third degree or a misdemeanor is a petty misdemeanor if the amount involved is less than Five Hundred Dollars (\$500.00).

(e) The amount involved in a theft shall be the fair market value of the property or services which the defendant stole or attempted to steal. Whether or not they have been issued or delivered, written instruments not having a readily ascertained market value shall be evaluated as follows:

(1) The value of an instrument constituting an evidence of a debt, such as a check, draft or promissory note, shall be the amount due or collectible thereon or thereby, that

figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(2) The value of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(f) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons or amounts involved in thefts by a servant, agent or employee from his principal or employer in any period of twelve (12) consecutive months, may be aggregated in determining the grade of the offense.

CLRC COMMENT: Grading values of offenses increased after review of other jurisdictions' grading values for theft.

- **RECOMMENDATION TO INCREASE OFFENSE GRADING VALUES FOR DISHONORED CHECKS AND AMEND 9 GCA § 46.30(B)(1)(A)-(D) AS FOLLOWS. NO OTHER AMENDMENTS TO § 46.30 ARE RECOMMENDED.**

§ 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 more than Five Hundred Dollars (\$500) ~~\$250, 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 \$2,500 or more ~~is more than \$1,000~~.

(D) guilty of a felony of the second degree punishable by imprisonment for not more than _____ years, or by payment of a fine of not more than _____, or both, if the value of the dishonored check, or checks aggregated under paragraph (2), is \$10,000.00 or more.

...

CLRC COMMENT: Grading values of offenses increased and second degree of offense created. The specific penalties in subsection (b)(1)(D) are subject to clarification by the Subcommission.

- **RECOMMENDATION TO AMEND 9 GCA § 46.102 AS FOLLOWS.**

§ 46.102. Mortgage Fraud.

(a) A person commits the offense of mortgage fraud *if* the person *does* any of the following with the intent to defraud:

(1) knowingly makes any material misstatement, misrepresentation, *or* omission during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, *or* any other party to the mortgage lending process;

(2) knowingly uses *or* facilitates the use of any material misstatement misrepresentation, *or* omission, during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, *or* any other party to the mortgage lending process;

(3) files *or* causes to be filed with the Department of Land Management any document that the person knows contains a material misstatement, misrepresentation, *or* omission; *or*

(4) receives any proceeds *or* any compensation in connection with a mortgage loan that the person knows resulted from a violation of this Section.

(b) Notwithstanding any other administrative, civil, or criminal penalties, a person who violates § 46.102(a) is guilty of a second degree felony.

CLRC COMMENT: Mortgage fraud classified as a second degree felony.

- **RECOMMENDATION TO AMEND 9 GCA § 46.103 AS FOLLOWS.**

§ 46.103. Classification of Offense.

(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)~~ (1) 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)(2)~~ 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)(3) 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.

CLRC COMMENT: Grading offenses removed except second degree felony consistent with § 46.102.

- **RECOMMENDATION TO AMEND 9 GCA § 70.15(H) AS FOLLOWS. NO OTHER AMENDMENTS TO § 70.15 ARE RECOMMENDED.**

§ 70.15. Definitions.

...

(h) Officer means a member of the Guam Police Department, a Mayor of Guam, an Animal Control Officer, a Conservation Officer, or any other person authorized by law ~~by the Chief of the Guam Police Department or by the Director of the Department of Agriculture.~~

...

CLRC COMMENT: Restriction on who may authorize an officer removed.

- **RECOMMENDATION TO AMEND 9 GCA § 70.20 AS FOLLOWS.**

§ 70.20. Animal Neglect (Violation).

(a) A person commits the offense of Animal Neglect if, except as otherwise authorized by § 70.65 of this Article, the person (1) intentionally or, knowingly, ~~or recklessly~~ fails to provide minimum care for an animal in the person's possession, or (2) recklessly or with criminal negligence causes physical injury to an animal in the person's possession.

(b) Animal Neglect is a violation ~~n offense punishable by a fine of not more than Five Hundred Dollars (\$500) per offense.~~

(c) Each act or omission in violation of Subsection (a) of this Section shall constitute a separate ~~offense~~ violation

CLRC COMMENT: Animal neglect classified as a violation as opposed to animal abuse in § 70.30 which is a misdemeanor. Language on fines and restitution deleted as they are generally covered in 9 GCA Chapter 80, Article 3.

- **RECOMMENDATION TO AMEND 9 GCA § 70.25 AS FOLLOWS.**

§ 70.25. Animal Abuse.

(a) A person commits the crime of Animal Abuse if, except as otherwise authorized by § 70.65 of this Article, the person intentionally, or knowingly, ~~recklessly, or with criminal negligence~~:

- (1) causes physical injury to an animal;
- (2) causes serious physical injury to an animal; or
- (3) causes the death of an animal.

(b) Animal Abuse under Subsection (a)(1) of this Section is a misdemeanor. Animal Abuse under Subsection (a)(2) or (a)(3) of this Section is a third degree felony.

(c) Each act or omission in violation of Subsection (a) of this Section shall constitute a separate offense.

CLRC COMMENT: Mens rea of recklessly and criminal negligence removed. Purpose of § 70.30 is to punish intentional and knowing animal abuse compared to animal neglect in § 70.20 which is a violation.

- **RECOMMENDATION TO AMEND 9 GCA § 70.35 AS FOLLOWS.**

§ 70.35. Animal Fighting.

(a) No person shall cause, sponsor, aid, abet, arrange, hold, or encourage any animal to fight, menace, or injure another animal for the purpose of sport, amusement, or pecuniary gain. ~~This Section does not apply to cockfighting that is authorized by law.~~

(b) For the purposes of this Section, a person encourages an animal to fight, menace or injure another animal for the purpose of sport, amusement, or pecuniary gain, if the person:

- (1) is knowingly present at or wagers on such an occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain;
- (2) owns, trains, transports, possesses, has custody or control of, breeds, or equips an animal with the intent that such animal will be engaged in such an occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain;
- (3) knowingly allows any such occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain to occur on any property owned or controlled by the person;
- (4) knowingly allows any animal to be used for such an occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain to be kept, boarded, housed, or trained on, or transported in, any property owned or controlled by the person;
- (5) knowingly advertises or uses any means of communication for the purpose of promoting such an occurrence of fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain; or

(6) knowingly possesses, owns, buys, sells, transfers, or manufactures any animal used for fighting, menacing, or injuring for the purpose of sport, amusement, or pecuniary gain; or any device intended to train or enhance the animal's fighting, menacing or injuring ability for the purpose of sport, amusement, or pecuniary gain.

(c) Any violation of Subsection (a) of this Section shall constitute Animal Fighting, which is a third degree felony.

~~(d) Notwithstanding any other provision of law, the penalty for a violation of Subsection (a) of this Section shall be confinement in a correctional facility in accordance with Article 2 of 9 GCA Chapter 80 and a fine of not less than Five Thousand Dollars (\$5,000) and no more than Fifteen Thousand Dollars (\$15,000), or both, per violation. Additionally, a~~ Any person convicted of any violation of this Section may be subject to seizure of any personal property, including vehicles, and real property at which the animal fight was staged."

CLRC COMMENT: Subsection (a) amended to address the federal ban on cockfighting. Subsection (d) language addressing imprisonment and fines removed, as these penalties are covered generally in 9 GCA Chapter 80 Article 3.

- **RECOMMENDATION TO AMEND 9 GCA § 70.50 AS FOLLOWS.**

§ 70.50. Animal Abandonment

(a) A person commits the offense of Animal Abandonment if the person intentionally, knowingly, or recklessly leaves a domestic animal at a location without providing for the animal's minimum care as defined in § 70.10.1(g) of this Article.

~~(b) Animal Abandonment is a violation that shall be subject to a fine of not more than Five Hundred Dollars (\$500).~~

(c) Each act in violation of Subsection (a) of this Section shall constitute a separate offense.

CLRC COMMENT: Subsection (b) language removed as fines are covered generally in 9 GCA Chapter 80 Article 3.

- **RECOMMENDATION TO REPEAL 9 GCA § 70.55 IN ITS ENTIRETY.**

~~**§ 70.55. Failure of a Motorist to Render Aid to an Injured Animal.**~~

~~A person commits the offense of Animal Abandonment if the person intentionally, knowingly, or recklessly leaves a domestic animal at a location without providing for the animal's minimum care as defined in § 70.10.1(g) of this Article.~~

~~(a) A person who, while operating a motor vehicle, knowingly injures or kills a cat, dog, or livestock, excluding chickens, shall stop and render such assistance as may be possible and safe to provide, and shall immediately report such injury or death to the animal's owner. In the event the owner cannot be ascertained and located, or it is unsafe to make contact with the animal's owner, the operator of the motor vehicle shall immediately report the accident and location to a peace officer or animal control officer.~~

~~(b) A violation of Subsection (a) of this Section shall be punishable by a fine of not more than Three Hundred Dollars (\$300) per offense.~~

CLRC COMMENT: Repeal recommended. Enforceability of this section is questioned and it creates a potentially dangerous duty.

- **RECOMMENDATION TO AMEND 9 GCA § 70.60(A)(2) AS FOLLOWS. NO OTHER AMENDMENTS TO § 70.60 ARE RECOMMENDED.**

§ 70.60. Leaving Animals Unattended in Motor Vehicles.

...

(a) For the purposes of this Section:

...

(2) Extreme temperature means an extremely cold or high temperature, inside ~~or~~ outside of a vehicle, that could endanger an animal's health, safety, or well-being.

...

CLRC COMMENT: Unnecessary language removed.

- **RECOMMENDATION TO AMEND 9 GCA § 70.65(G)(2) AND (3) AS FOLLOWS. NO OTHER AMENDMENTS TO § 70.65 ARE RECOMMENDED.**

§ 70.65. Defenses; Exceptions.

...

(g) Sections 70.10 to 70.85 of this Article shall not apply to:

...

~~(2) cockfighting in a manner and at such times and places as are authorized by law;~~

(3) the proper killing of animals used for food, ~~except for dogs and cats,~~ in accordance with the law;"

...

CLRC COMMENT: Subsection (g)(2) removed to address the federal ban on cockfighting. Subsection (g)(3) amended to respect the cultures that consume these animals.

- **RECOMMENDATION TO AMEND 9 GCA §70.80(B)(1) AS FOLLOWS. NO OTHER AMENDMENTS TO § 70.80 ARE RECOMMENDED.**

§ 70.80. Sentencing Provisions.

...

(b) Evaluation & Treatment.

(1) In addition to any other sentence it may impose, the court ~~shall~~ may order the defendant convicted of a felony crime under this Article to undergo a psychiatric,

psychological, or mental health evaluation, and if warranted by the condition of the defendant, ~~shall~~may order the defendant to undergo appropriate care or treatment.

...

CLRC COMMENT: Subsection (b)(1) amended as the determination whether to order a mental examination for an offender under this Article should be at the court's discretion.

- **RECOMMENDATION TO AMEND 9 GCA §70.320(C)(1) AS FOLLOWS. NO OTHER AMENDMENTS TO § 70.320 ARE RECOMMENDED.**

§ 70.320. Intoxication of Persons Under the Age of Twenty-One.

...

(c) Any person who violates this Section:

(1) shall be guilty of a misdemeanor ~~punished by a fine of not more than Two Thousand Dollars (\$2,000) or by imprisonment for not more than one (1) year or both;~~ and

...

CLRC COMMENT: Subsection (c)(1) amended to clarify the definition of the offense as a misdemeanor. Language removed as imprisonment and fines are covered generally in 9 GCA Chapter 80 Article 3.

- **RECOMMENDATION TO AMEND 9 GCA §70.330 AS FOLLOWS.**

§ 70.330. Possession of Cannabis by Persons Under Twenty-one (21) Years of Age.

Any person under twenty-one (21) years of age possessing cannabis shall be guilty of a violation ~~petty misdemeanor~~ and subject to a One Hundred Dollar (\$100.00) fine ~~and suspension of their driver's license for twelve (12) months for the first offense and a Two Hundred Fifty Dollar (\$250.00) fine and suspension of their driver's license for an additional twelve (12) months for each subsequent possession. Suspension of one's driver's license may be waived by the court and replaced with one hundred (100) hours of community service for each possession if the guilty individual can demonstrate financial or personal hardship resulting from the loss of his or her driving privileges. The violation of this Section and the resulting penalties prescribed herein are in addition to other violations of public law related to cannabis possession.~~

CLRC COMMENT: Possession classified as a violation for consistency with the possession statute. Recommend moving § 70.330 to Chapter 67 which covers narcotics and controlled substances.

- **RECOMMENDATION TO AMEND 9 GCA §70.420 AS FOLLOWS.**

§ 70.420. Jet Ski Operation, Tumon Bay and Pago Bay.

No person shall operate a jet ski or water ski within the reef along Tumon Bay and Pago Bay ~~except that a jet ski may be operated in the channel to enter or exit Tumon Bay and~~

~~Page Bay.~~ This prohibition shall not apply to the use of jet ski for emergency rescue or for law enforcement purposes. Any person who violates this Section is guilty of a misdemeanor.

CLRC COMMENT: Inconsistent language removed.

- **RECOMMENDATION TO REPEAL 9 GCA § 70.430 IN ITS ENTIRETY.**

~~§ 70.430. Unlawful Use of Telephone; Defined & Punished.~~

~~(a) A person is guilty of unlawfully using a telephone when he:~~

~~(1) refuses to relinquish immediately a party line or public telephone when informed that the party line or public telephone is needed for an emergency call to the Department of Public Safety, Armed Services Police, Air Sea Rescue or for medical aid or ambulance service; or~~

~~(2) secures the use of a party line or public telephone by falsely stating that such line or telephone is needed for an emergency.~~

~~(b) As used in this Section, party line means a subscriber's telephone circuit consisting of two (2) or more named telephone stations connected therewith, each station having a distinctive ring or telephone number.~~

~~(c) As used in this Section, public telephone means a telephone available for public use.~~

~~(d) As used in this Section, emergency means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.~~

~~(e) Unlawfully using a telephone, as defined in Paragraph (1) of Subsection (a) of this Section, is a misdemeanor. Otherwise, it is a violation.~~

CLRC COMMENT: Repealed as archaic and unnecessary.

- **RECOMMENDATION TO REPEAL § 70.450(A) AND (B). RECOMMENDATION TO REPEAL AND REENACT § 70.450(C)-(I) AS CIVIL STATUTES.**

~~§ 70.450. Blacklisting Employees.~~

~~(a) If any person, agent, company, corporation, public official, or governmental agency, after having discharged any employee from his or its service, shall prevent or attempt to prevent by word or writing of any kind of untrue statement, or, in any manner, conspires or contrives, by correspondence or otherwise by means of an untrue statement, to prevent, such discharged employee from obtaining employment with any other person, company, corporation or governmental agency, such person, agent, corporation or public official is guilty of a petty misdemeanor and shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) for each violation; and such person, agent, company, corporation, elected or appointed public official, or governmental agency shall be liable in civil/penal damages to such discharged person, to be recovered by civil action. This Section shall not be construed as prohibiting any person or agent of any company or corporation from furnishing in writing, upon request, to any other person, company or corporation to whom such discharged person or employee has applied for employment, a truthful statement of the reason for such discharge.~~

~~(b) An employer, employee or other person, by threats of injury, intimidation or force, alone or in combination with others, may not prevent a person from entering into, continuing in or leaving the employment of any person, firm, governmental office/agency or corporation. Any person who violates this paragraph is guilty of a misdemeanor and shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) for each violation; and such person, agent, company, corporation, elected or appointed public official, governmental agency shall be liable in civil/penal damages to such discharged person, to be recovered by civil action.~~

~~(c) An employer who in good faith provides information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee is immune from civil liability for the disclosure or the consequences of providing the information. There is a presumption of good faith if either:~~

~~(1) The employer employs less than one hundred (100) employees and provides only the information authorized by this Subsection.~~

~~(2) The employer employs at least one hundred (100) employees and has a regular practice in Guam of providing information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee.~~

~~(d) The presumption of good faith under Subsection (c) of this Section is rebuttable by showing that the employer disclosed the information with actual malice or with intent to mislead. This Subsection and Subsection (c) of this Section do not alter any privileges that exist under common law. For the purposes of this Subsection, "actual malice" means knowledge that the information was false or was provided with reckless disregard of its truth or falsity.~~

~~(e) Communications concerning employees or prospective employees that are made by an employer or prospective employer, or by a labor organization, to a government body or agency and that are required by law or that are furnished pursuant to written rules or policies of the government body or agency are privileged.~~

~~(f) An employer, including the government of Guam and its agencies, a labor organization or an individual is not civilly liable for privileged communications made pursuant to Subsection (e) of this Section.~~

~~(g) In response to a request by another bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker it is not unlawful for a bank, a savings and loan association, a credit union, an escrow agent, a commercial mortgage banker, a mortgage banker or a mortgage broker to provide a written employment reference that advises of the applicant's involvement in any theft, embezzlement, misappropriation or other defalcation that has been reported to federal authorities pursuant to federal banking guidelines or reported to the department of financial institutions. In order for the immunity provided in Subsection (h) of this Section to apply, a copy of the written employment reference must be sent by the institution~~

~~providing the reference to the last known address of the applicant in question.~~

~~(h) No bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker shall be civilly liable for providing an employment reference unless the information provided is false and the bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker providing the false information does so with knowledge and malice.~~

~~(i) A court shall award court costs, attorney fees and other related expenses to any party that prevails in any civil proceeding in which a violation of this Section is alleged.~~

CLRC COMMENT: Repealed as an unnecessary criminal offense. Because subsections (c)-(i) regard civil liability, recommend reenactment of (c)-(i) as civil statutes.

ATTACHMENT 3
PLENARY MEETING OF FEBRUARY 29, 2024
RECOMMENDATIONS OF THE
SUBCOMMISSION ON CRIMES AGAINST PERSONS

The Subcommittee reported its extensive review and debate on Chapters 40 (Robbery), 71 (Guam Gun Free School Zone Act of 2004), 91 (Infant Child's Right to Life Act), 93 (Criminal Sexual Conduct Assessment and Rehabilitation Act), and 9 GCA § 31.30 (Child Abuse). After much discussion, the Subcommittee decided that it would make no recommendations to these laws.