I Mina'trentai Ocho Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
317-38 (COR)	Frank F. Blas, Jr. Telo T. Taitague Eulogio Shawn Gumataotao William A. Parkinson V. Anthony Ada Shelly V. Calvo Tina Rose Muña-Barnes Jesse A. Lujan	AN ACT TO *REPEAL AND REENACT* CHAPTERS 1, 4, 16, 17, 19, 22, 25, 25A, 31, 34, 37, 40, 43, 46, 47, 48, 52, 55, 70, 71, 90, AND 91 OF TITLE 9, GUAM CODE ANNOTATED AND TO *AMEND* §§ 60109, 60110, AND 60110.1 OF CHAPTER 60, TITLE 10, GUAM CODE ANNOTATED AS RECOMMENDED BY THE GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION RELATIVE TO THE COMMISSION'S MANDATE TO RECOMMEND ENACTMENTS, AMENDMENTS AND REPEALS TO GUAM'S CRIMINAL LAWS AND PROCEDURES TO I LIHESLATURAN GUÅHAN.	5/12/26 10:57 a.m. ^8/14/26 3:19 p.m.						Exhibits A and B

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2026 (SECOND) Regular Session

Bill No. 317-38 (COR)

Introduced by: Frank F. Blas, Jr.
Telo T. Taitague
Eulogio Shawn Gumataotao
William A. Parkinson
V. Anthony Ada
Shelly V. Calvo
Tina Rose Muña-Barnes
Jesse A. Lujan

AN ACT TO *REPEAL AND REENACT* CHAPTERS 1, 4, 16, 17, 19, 22, 25, 25A, 31, 34, 37, 40, 43, 46, 47, 48, 52, 55, 70, 71, 90, AND 91 OF TITLE 9, GUAM CODE ANNOTATED AND TO *AMEND* §§ 60109, 60110, AND 60110.1 OF CHAPTER 60, TITLE 10, GUAM CODE ANNOTATED AS RECOMMENDED BY THE GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION RELATIVE TO THE COMMISSION'S MANDATE TO RECOMMEND ENACTMENTS, AMENDMENTS AND REPEALS TO GUAM'S CRIMINAL LAWS AND PROCEDURES TO I LIHESLATURAN GUÅHAN.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. Public Law 36-119 established the Guam Criminal Law and Procedure Review Commission ("CLRC") to conduct the first comprehensive and systematic review of the Guam Criminal Procedure Code codified in Title 8 of the Guam Code Annotated and the Guam Criminal and Correctional Code codified in Title 9 of the Guam Code Annotated,

which were adopted in 1976, and to recommend to *I Liheslaturan Guåhan* such revisions, amendments, and repeals as may be necessary to update and modernize these codes, with priority given to the review of Title 9 of the Guam Code Annotated.

In accordance with this mandate, the CLRC submitted to *I Liheslaturan Guåhan*, on June 13, 2025, an Interim Report setting forth its findings and recommendations for amendments to selected chapters of Title 9 of the Guam Code Annotated. The Interim Report, attached to this Bill as Exhibit A, identified changes to sections in blackline (markup) format, with CLRC comments explaining the changes or indicating that no changes were recommended. The remaining chapters of Title 9, and other criminal statutes, are to be addressed in subsequent reports of the CLRC.

On February 6, 2026, the CLRC submitted a Notice of Interim Report Errata and Revisions ("Notice of Errata") to *I Liheslaturan Guåhan* correcting clerical errors and withdrawing recommendations for those provisions in Title 9 that had been amended by legislation enacted after the CLRC Interim Report was transmitted to *I Liheslaturan Guåhan* on June 13, 2025. The Notice is attached to this Bill as Exhibit B.

Accordingly, it is the intent of *I Liheslaturan Guåhan*, through this Act, to adopt and implement the recommendations of the CLRC as set forth in the Interim Report and the Notice of Errata consistent with the purposes of Public Law 36-119. The remaining Title 9 Chapters will be subject to legislative review and approval upon their completion by the CLRC.

Title 9 Chapters included herein incorporate legislative amendments enacted after submission of the Interim Report.

Section 2. Guam Compiler of Laws to Codify. The Guam Compiler of Laws shall codify the chapters as repealed and reenacted in this Act and may include CLRC explanatory comments as appropriate.

Section 3. No Retroactive Effect. The provisions of this Act shall not apply to offenses committed prior to its effective date. For offenses committed prior to this Act's effective date, the laws in effect on the date of the commission of such offenses shall apply, with such laws being specifically revived and continued in effect solely for that purpose, as if this Act were not in force. An offense was committed after the effective date of this Act if any of the elements of the offense occurred subsequent thereto.

Section 4. Effective Date. This Act takes effect ninety (90) days after enactment.

Section 5. Chapter 1, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 1

PRELIMINARY PROVISIONS: DEFINITIONS

ARTICLE 1

PRELIMINARY PROVISIONS; CONSTRUCTION

§ 1.10. Short Title.

This ~~Code~~ Title 9 of the Guam Code Annotated shall be known as the Guam Criminal ~~and Correctional~~ Code.

~~**§ 1.12. Severability.**~~

~~If any provisions of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.~~

§ 1.12. Rules of Construction.

Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.

(a) Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.

(b) Whenever any reference is made to any portion of this Code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

(c) The present tense includes the past and future tenses; and the future, the present.

(d) The masculine gender includes the feminine and neuter.

(e) The singular number includes the plural; and the plural, the singular.

(f) Shall is mandatory and may is permissive.

(g) If any provisions of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

§ 1.14. ~~Purpose for Defining Offenses~~ Purposes, Principles of Construction.

(a) The general purposes of the provisions governing the definition of offense are:

(1) to forbid, prevent, and condemn conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;

(2) to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentence authorized, the rehabilitation of those convicted, and their confinement when required in the interest of public protection;

(3) to subject to public control persons whose conduct indicates that they are disposed to commit offenses;

(4) to give fair warning of the nature of the conduct proscribed and of the

sentences authorized upon conviction;

(5) to differentiate on reasonable grounds between serious and minor offenses; and

(6) to define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault.

(b) The general purposes of the provisions governing the sentencing of offenders are:

(1) to prevent and condemn the commission of offenses;

(2) to promote the correction and rehabilitation of offenders;

(3) to assure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protections;

(4) to safeguard offenders against excessive, disproportionate, or arbitrary punishment;

(5) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;

(6) to differentiate among offenders with a view to a just individualization in their treatment; ~~and~~

(7) to advance the use of generally accepted scientific methods and knowledge in sentencing offenders~~.~~;

(8) to promote restitution to victims;

(9) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and

(10) to impose sentences no more severe than necessary to achieve the societal purposes for which they are authorized.

(c) The provisions of this Code shall be construed according to the fair import

of their terms, but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by this Code shall be exercised in accordance with the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.

§ 1.16. Territorial Applicability.

(a) Except as otherwise provided in this Section, a person may be convicted under the law of ~~this Territory~~ Guam of an offense committed by his own conduct or the conduct of another for which he is legally accountable if~~;~~:

(1) the conduct which is an element of the offense or the result which is such an element occurs within ~~this Territory~~ Guam;

(2) conduct occurring outside the Territory is sufficient under the law of ~~this Territory~~ Guam to constitute an attempt to commit an offense within ~~the Territory~~ Guam;

(3) conduct occurring outside ~~the Territory~~ Guam is sufficient under the law of ~~this Territory~~ Guam to constitute a conspiracy to commit or offense within ~~the Territory~~ Guam and an overt act in furtherance of such conspiracy occurs within ~~the Territory~~ Guam;

(4) conduct occurring within ~~the Territory~~ Guam establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which is also an offense under the law of ~~this Territory~~ Guam.

(5) the offense consists of the omission to perform a legal duty imposed by the law of ~~this Territory~~ Guam with respect to domicile, residence, or a relationship to a person, thing, or transaction in ~~the Territory~~ Guam; or

(6) the offense is based on a statute of ~~this Territory~~ Guam which expressly prohibits conduct outside ~~the Territory~~ Guam, when the conduct bears a reasonable relation to a legitimate interest of ~~this Territory~~ Guam and the person knows or should know that his conduct is likely to affect that interest.

(b) ~~Paragraph (1) of~~ Subsection (a)(1) does not apply when either causing a specified result or an intent to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(c) ~~Paragraph (1) of~~ Subsection (a)(1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside ~~the Territory~~ Guam which would not constitute an offense if the result had occurred there, unless the person intentionally or knowingly caused the result within ~~the Territory~~ Guam.

(d) When the offense is homicide, either death of the victim or the bodily impact causing death constitutes a "result," within the meaning of ~~Paragraph (1) of~~ Subsection (a)(1) and if the body of a homicide victim is found within ~~the Territory~~ Guam, it is presumed that such result occurred within ~~the Territory~~ Guam.

(e) ~~The Territory~~ Guam includes the land and water and the air space above such land and water with respect to which ~~the Territory~~ Guam has legislative jurisdiction.

(f) Notwithstanding that territorial jurisdiction may be found under this Section, the court may dismiss, hold in abeyance for up to six months, or with the permission of the defendant, place on an inactive list a criminal prosecution under the law of ~~this Territory~~ Guam where it appears that such action is in the interests of justice because the defendant is being or is likely to be prosecuted for an offense based on

the same conduct in another jurisdiction and ~~the Territory~~ Guam's interest will be adequately served by a prosecution in the other jurisdiction.

§ 1.18. Classes of Crimes.

(a) An offense defined by this Code or by any other statute of Guam, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors or petty misdemeanors.

(b) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which, apart from an extended term, is in excess of one year.

(c) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto.

(d) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(e) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto or if it is defined by a statute other than this Code which now provides that person convicted thereof may be sentenced to imprisonment for a maximum term of less than one year.

(f) An offense defined by this Code or by any other statute of Guam constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(g) An offense defined by any statute of Guam other than this Code shall be classified as provided in this Section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

§ 1.19. Felonies Defined and Classified.

(a) Felonies defined by this Code are classified, for the purpose of sentence, into three degrees, as follows:

(1) felonies of the first degree;

(2) felonies of the second degree;

(3) felonies of the third degree.

Any crime declared to be a felony, without specification of degree, is of the third degree.

(b) Notwithstanding any other provision of law, a felony defined by any statute of Guam other than this Code shall constitute for the purpose of sentence a felony of the third degree.

§1.20. Relationship of Code to Other Laws; Contempts, Penalties and Remedies.

(a) No conduct constitutes an offense unless it is a crime or violation under this Code or other statute of Guam.

(b) The provisions of this Code shall apply to offenses defined by other statutes, unless otherwise expressly provided or unless the context otherwise requires.

(c) Nothing in this Code shall affect the power of a court to punish contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(d) Nothing in this Code shall bar or suspend any liability for damages, penalty, forfeiture, or other remedy otherwise authorized by law to be recovered or enforced in any civil action or proceeding, for any conduct punishable by this Code.

§ 1.22. Prosecution for Conduct Which Constitutes More Than One Offense.

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other as defined in 8 GCA § 105.58 ~~of the Criminal Procedure Code~~;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other,

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

§ 1.24. Double Jeopardy. Same Offense.

A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(b) The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this Subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of fact. Termination under any of the following circumstances is not improper:

(1) the defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination;

(2) the trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed; or

(3) the trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity.

§ 1.26. Double Jeopardy. Different Offense.

A prosecution of a defendant for a violation of a different provision of the statutes or based on different facts than a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is for:

(1) any offense of which the defendant could have been convicted on the first prosecution;

(2) any offense of which the defendant should have been tried on the first prosecution under ~~Subsection (b) of § 65.30 of the Criminal Procedure Code~~ 8 GCA § 65.30(b) unless the court ordered a separate trial of the charge of such offense; or

(3) the same conduct, unless (A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil, or (B) the second offense was not consummated when the former trial began.

(b) The former prosecution was terminated, after the complaint was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(c) The former prosecution was improperly terminated, as improper termination is defined in § 1.24, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

§ 1.28. Concurrent Jurisdiction. When a Bar to Prosecution.

When conduct constitutes an offense within the concurrent jurisdiction of Guam and of the United States or any state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in Guam under the following circumstances:

(a) the first prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is based on the same conduct, unless (1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact

not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or (2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or (3) the second offense was not consummated when the former trial began; or

(b) the former prosecution was terminated after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

§ 1.30. Former Prosecutions. When Not a Bar to Present Prosecution.

A prosecution is not a bar within the meaning of §§ 1.24, 1.26 and 1.28 under ~~either~~ any of the following circumstances:

(a) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense tried in that court; ~~or~~

(b) The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a petition for post-conviction relief or similar process, except that any bar as to reprosecution for a greater inclusive offense created by ~~Subsection (a) of~~ § 1.24(a) shall apply~~.~~; or

(c) The former prosecution resulted in a plea of guilty or nolo contendere which was held invalid in an appeal under 8 GCA § 130.15(e) and the defendant may be retried as if the former plea had not been entered.

§ 1.32. [Reserved.]

[Reserved.]

~~§ 1.34. Rules of Construction.~~

~~Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.~~

~~§ 1.36. Headings.~~

~~Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.~~

~~§ 1.38. Amendments Included.~~

~~Whenever any reference is made to any portion of this Code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.~~

§ 1.40. [Reserved.]

[Reserved.]

~~§ 1.42. Tenses.~~

~~The present tense includes the past and future tenses; and the future, the present.~~

~~§ 1.44. Gender.~~

~~The masculine gender includes the feminine and neuter.~~

~~§ 1.46. Number.~~

~~The singular number includes the plural; and the plural, the singular.~~

~~§ 1.48. Shall and May.~~

~~Shall is mandatory and may is permissive.~~

§ 1.50. Military Authority.

This Code does not affect any authority otherwise conferred by law upon any court-martial or other military authority or officer to prosecute and punish persons violating such codes or laws.

ARTICLE 2

DEFINITIONS

§ 1.60. General Definitions Applicable to Entire Title.

Unless otherwise expressly stated:

~~(a) Chapter means a chapter of this Title.~~

~~(b) Article means an article of the chapter in which that term occurs.~~

~~(c) Section means a section of this Code.~~

~~(d) Subsection means a subsection of the section in which that term occurs.~~

~~(e) Paragraph means a paragraph of the subsection in which that term occurs.~~

~~(f)~~ Person means any natural person, partnership, firm, association, corporation or other legal entity.

§ 1.70. Peace Officer.

As used in this Code, peace officer has the meaning provided by 8 GCA § 5.55 of the Criminal Procedure Code.

~~§ 1.80. Territory.~~

~~As used in this Code, Territory means Guam.~~

Section 6. Chapter 4, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 4

GENERAL PRINCIPLES OF LIABILITY

§ 4.10. Conduct to Include Voluntary Act or Omission.

A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

§ 4.15. Voluntary Act Defined.

(a) A *voluntary act* is one performed consciously as a result of effort or determination.

(b) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control of it for sufficient time to have been able to terminate his control.

§ 4.20. Liability for Omission Limited.

A person is not guilty of an offense if his liability is based solely on an omission unless the law defining the offense expressly so provides, or a duty to perform the act is otherwise imposed by law.

§ 4.25. Culpability.

Except as provided in § 4.45, a person is not guilty of a crime unless he acts intentionally, knowingly, recklessly or with criminal negligence, as the law may require, with respect to the conduct, the result thereof or the attendant circumstances which constitute the material elements of the crime.

§ 4.30. Culpability Defined.

(a) A person acts intentionally, or with intent, with respect to his conduct or to a result thereof when it is his conscious purpose to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to his conduct or to attendant circumstances when he is aware of the nature of his conduct or that those circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is practically certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to attendant circumstances or the result of his conduct when he acts in awareness of a substantial risk that the circumstances exist or that his conduct will cause the result and his disregard is unjustifiable and constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to attendant circumstances or the result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or that his conduct will cause the result and his failure to be aware of the risk constitutes a gross

deviation from the standard of care that a reasonable person would exercise in the situation.

§ 4.35. Culpability Applied to Elements of Offense.

(a) If the definition of an offense prescribes a culpable mental state but does not specify the conduct, attendant circumstances or result to which it applies, the prescribed culpable mental state shall apply to each such material element.

(b) If the definition of a crime prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(c) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of an offense unless the statue clearly so provides.

§ 4.40. Culpable Mental State Generally Required.

Except as provided in § 4.45, if the definition of a crime does not expressly prescribe a culpable mental state, a culpable mental state is nonetheless required and is established only if a person acts intentionally, knowingly or recklessly.

§ 4.45. ~~Same~~ Culpable Mental State: When Inapplicable.

The culpable mental state requirements of § 4.25 and § 4.40 do not apply if the offense is a violation or if the law defining the offense clearly indicates a purpose to dispense with any culpable mental state requirement.

§ 4.50. Causation Established and Defined.

(a) An element of an offense which requires that the defendant have caused a particular result is established when his conduct is an antecedent but for which the result would not have occurred, and,

(1) if the offense requires that the defendant intentionally or knowingly caused the result, that the actual result, as it occurred,

(A) is within the purpose of contemplation of the defendant, whether the purpose or contemplation extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that designed or contemplated and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(2) if the offense requires that the defendant recklessly or negligently cause the result, that the actual result, as it occurred,

(A) is within the risk of which the defendant was or should have been aware, whether that risk extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that recklessly or negligently risked and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(3) if the offense imposes strict liability, that the actual result, as it occurred, is a ~~probably~~ probable consequence of the defendant's conduct.

(b) A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed, contemplated or risked is that a different person or property was injured or affected or that a less serious or less extensive injury or harm occurred.

§ 4.55. Guilt Established by Causing or Aiding Innocent Party in Commission of Crime.

A person is guilty of an offense if, acting with the culpability required for the offense, he causes or aids an innocent or non-responsible person to engage in conduct prohibited by the definition of the offense.

§ 4.60. Guilt Established by Complicity.

A person is guilty of an offense if, with the intention of promoting or assisting in the commission of the offense, he induces or aids another person to commit the offense. If the definition of the offense includes lesser offenses, the offense of which each person shall be guilty shall be determined according to his own culpable mental state and to those aggravating or mitigating factors which apply to him.

§ 4.65. Criminal Facilitation Established and Punished.

A person is guilty of criminal facilitation when, knowing that another person intends to engage in conduct which in fact constitutes a crime, he knowingly furnishes substantial assistance to him.

Criminal facilitation of a felony of the first degree is a felony of the third degree.

Criminal facilitation of a felony of the second or of the third degree is a misdemeanor.

Criminal facilitation of a misdemeanor or petty misdemeanor is a petty misdemeanor.

§ 4.70. Criminal Liability for Acts of Another: ~~Non-Availability of~~ Certain Defenses <u>Not Available</u>.

In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is no defense that:

(a) the offense can be committed only by a particular class of persons to which the defendant does not belong; or

(b) the other person has legal immunity from prosecution, or has not been prosecuted for or convicted of an offense based upon the conduct in question, or has previously been acquitted.

§ 4.75. ~~Same~~ Criminal Liability for Acts of Another: Defenses Available.

Unless otherwise provided by law, in any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is a defense that:

(a) the defendant was a victim of the offense; or

(b) under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant withdrew from participation in the offense and made a reasonable effort to stop the commission of the offense.

§ 4.80. Criminal Liability of Corporations.

(a) A corporation may be convicted of:

(1) any offense committed in furtherance of its affairs on the basis of conduct performed, authorized, requested, commanded or recklessly tolerated by (A) the board of directors; (B) a managerial agent acting in the scope of his employment; or (C) any other person for whose conduct the statute defining the offense provides criminal responsibility;

(2) any offense consisting of a failure to perform a duty imposed by law; or

(3) any petty misdemeanor or violation committed by an agent of the corporation acting in the scope of his employment in furtherance of its affairs.

(b) It is no defense that an individual upon whose conduct liability of the corporation is based has not been prosecuted or convicted, has been convicted of a different offense or is immune from prosecution.

(c) As used in this Section, managerial agent means an agent of the corporation having duties of such responsibility that his conduct may fairly be found to represent the policy of the corporation.

Section 7. Chapter 16, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 16

CRIMINAL HOMICIDE

§ 16.10. Definitions Applicable to Chapter.

As used in this Chapter:

(a) *Human Being* means a person who has been born and is alive;

(b) *Bodily Injury* means physical pain, illness, unconsciousness or any impairment of physical condition;

(c) *Serious Bodily Injury* means bodily injury which creates: serious permanent disfigurement; a substantial risk of death or serious, permanent disfigurement; severe or intense physical pain; or protracted loss or impairment of consciousness or of the function of any bodily member or organ;

(d) *Deadly Weapon* means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to the defendant to be capable of producing death or serious bodily injury.

§ 16.20. Criminal Homicide Defined.

(a) A person is guilty of criminal homicide if he causes the death of another human being:

(1) intentionally and with premeditation; or

(2) intentionally; or

(3) knowingly; or

(4) recklessly; or

(5 by criminal negligence.

(b) *Criminal homicide* is aggravated murder, murder, manslaughter or negligent homicide.

§ 16.30. Aggravated Murder Defined.

(a) Criminal homicide constitutes aggravated murder when:

(1) it is committed intentionally with premeditation; or

(2) it is committed during the commission or attempt to commit any felony defined in Chapters 22, 25, 31, 34, 37, 40 or 58 of this Title; or

(3) death is directly caused by the illegal use of a Schedule I or Schedule II Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old ~~(Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substances directly causes the death of such minor child, is guilty of aggravated murder. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.)~~; or

(4) death of a minor child under the age of eighteen (18) is directly caused by a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title by a person who is not licensed to prescribe or dispense the substance; or

~~(4)~~ (5) it is committed upon the orders of another person. Such person giving the order is also guilty of aggravated murder.

(b) Aggravated murder is a felony of the first degree, but a person convicted of aggravated murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, further, that any person convicted of aggravated murder shall *not* be eligible for parole, work release, educational programs outside the confines of prison nor shall his sentence be suspended.

§ 16.40. Murder Defined.

(a) Criminal homicide constitutes murder when:

(1) it is committed intentionally or knowingly; or

(2) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life; or

(3) death is directly caused by the illegal use of a Schedule I or Schedule II Controlled Substance, defined by Chapter 67 of this Title, to any person~~. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance directly causes the death of such person, is guilty of murder. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.~~; or

(4) death of a person who is eighteen (18) years or older is the result of a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title.

(b) Murder is a felony of the first degree, but a person convicted of murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, however, that any person convicted of murder shall be eligible for parole after serving fifteen (15) years as provided in § 80.72 of this Title and no part of said sentence shall be suspended; provided, further, that any person convicted of murder shall also *not* be eligible for work release or educational programs outside the confines of prison.

§ 16.50. Manslaughter Defined and Classified.

(a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. ~~(~~The reasonableness of such explanation or

excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.~~)~~; or

(3) death is indirectly or proximately caused, such as an accident, by the illegal use of a Schedule I or Schedule II Controlled Substance, as defined by Chapter 67 of this Title, to a person under the influence of such controlled substance; or ~~. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance indirectly or proximately causes the death of such person, is guilty of manslaughter. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.~~

(4) death of a person who is eighteen (18) years or older results from a knowing or willing transfer or sale of a Schedule I or Schedule II controlled substance, where such controlled substance proximately causes the death of such person.

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

§ 16.60. Negligent Homicide Defined and Classified.

(a) Criminal homicide constitutes negligent homicide when it is committed by criminal negligence.

(b) Negligent homicide is a felony of the third degree.

Section 8. Chapter 17 (Unborn Victims of Violence Act), Title 9, Guam Code Annotated was reviewed and no changes are recommended to this Chapter.

Section 9. Chapter 19, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 19

ASSAULT, RECKLESS ENDANGERING, TERRORIZING

§ 19.10. General Definitions.

As used in this Chapter, the terms bodily injury, serious bodily injury and deadly weapon have the meanings provided by § 16.10.

§ 19.20. Aggravated Assault; Defined & Punished.

(a) A person is guilty of aggravated assault if he either recklessly causes or attempts to cause:

(1) serious bodily injury to another in circumstances manifesting extreme indifference to the value of human life;

(2) serious bodily injury to another;

(3) bodily injury to another with a deadly weapon.

(b) Aggravated assault under ~~Paragraph (1) of~~ Subsection (a)(1) is a felony of the second degree; aggravated assault under ~~Paragraphs (2) or (3) or~~ Subsection (a)(2) or (3) is a felony of the third degree; provided that any person convicted of aggravated assault shall not be eligible for work release or educational programs outside the confines of prison.

§ 19.30. Assault; Defined & Punished.

(a) A person is guilty of assault if he:

(1) either recklessly causes or attempts to cause bodily injury to another;

(2) recklessly uses a deadly weapon in such a manner as to place another in danger of bodily injury; or

(3) by physical menace intentionally puts or attempts to put another in fear of imminent bodily injury.

(b) (1) An assault against a peace officer who is performing his official duties as a peace officer is a felony of the third degree if the perpetrator knew *or* should have known that the victim was a peace officer.

(A) In any assault against a peace officer, the jury *shall*, with any finding of guilty, also return a finding as to whether the perpetrator had actual knowledge that the victim was a peace officer.

(B) *If* the jury finds that the perpetrator had actual knowledge that the victim was a peace officer, the court *shall* impose a minimum sentence of one (1) year in prison without suspension, probation, parole, *or* work release.

(2) For purposes of this § 19.30, *peace officer* means one so defined in § 5.55, Title 8, Guam Code Annotated, and to also include those individuals serving in a volunteer law enforcement capacity within any government of Guam law enforcement entity.

(c) An assault committed by a peace officer on a person in his custody or control, without any provocation whatsoever and with the use of excessive force, is a felony of the third degree.

(d) An assault committed in a fight or scuffle entered into by mutual consent is a petty misdemeanor.

(e) Any other assault is a misdemeanor.

§ 19.40. Reckless Conduct; Defined & Punished.

(a) A person is guilty of reckless conduct if he:

(1) recklessly engages in conduct which unjustifiably places or may place another in danger of death or serious bodily injury;

(2) intentionally points a firearm at or in the direction of another, whether or not the defendant believes it to be loaded.

(b) Reckless conduct is a misdemeanor.

§ 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.

(b) Terroristic conduct is a felony of the third degree.

(c) Whoever, through the use of the mail, telephone, tablet, computer, telegraph, social media, artificial intelligence, automated communication, deepfake or synthetic media technologies, or any other electronic or digital means, or other instrument of interstate or foreign commerce, or in or affecting interstate or foreign commerce, or in or affecting interstate or foreign commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be a felony of the third degree and, notwithstanding any other provision of law, be imprisoned for not more than ten (10) years and fined pursuant to paragraph (d), *infra*, or both.

(d) Whoever commits a violation of this Section by making a threat or perceived threat, conveying false information as described in Subsection (c), and such conduct is directed against a public building, public facility, place of business, healthcare facility or public or private school, and such conduct results in a substantial disruption of public services, public safety, or government operations, shall, upon conviction, be subject to the penalties prescribed herein and shall be deemed to have committed a crime against the community. Prosecution under this Subsection shall not preclude prosecution under § 43.31 of Chapter 43, Title 9, Guam Code Annotated, where applicable. For Purposes of this Subsection:

(1) 'Public building' means any structure owned, leased, or operated by the government of Guam or any of its subdivisions.

(2) 'Public facility' includes schools, hospitals, transportation terminals, utility installations, and similar infrastructure serving a public function.

(e) Fines for a violation of this Section shall not be less than Two Thousand Five Hundred Dollars ($2,500.00) and no more than Twenty-Five Thousand Dollars ($25,000) per location affected. Fines shall be continuously appropriated in the following order of priority:

(1) One Thousand Dollars ($1,000) to the Flame Fund;

(2) One Thousand Dollars ($1,000) to the Police Services Fund;

(3) Five Hundred Dollars ($500.00) to the Enhanced 911 Fund; and

(4) Any fines collected beyond Two Thousand Five Hundred Dollars ($2,500) per location shall be continuously appropriated to the Criminal Injuries Compensation Fund.

(f) Any person, business or other party, affected by the violator(s) of this Section, may recover actual damages, costs, and attorney's fees in a civil action.

(g) Section 80.39.1, 9 GCA shall not apply to the minimum fines required by this Section. Notwithstanding any other provision of law, fines assessed pursuant to this Section shall not be converted to Community Service as provided for in Article 6, Chapter 80, 9 GCA.

(h) Conduct that involves knowingly providing false information to law enforcement or emergency services, and which does not involve the intent or reckless disregard necessary to constitute terroristic conduct as defined in this Section, may be prosecuted under § 55.20 or § 55.25 of this Title, as appropriate. Nothing in the Subsection shall preclude prosecution under this Section, where the elements of terroristic conduct are met, no shall it be construed to limit the discretion of prosecutors to pursue charges under one or more applicable provision of law.

§ 19.60. Terrorizing; Defined & Punished.

(a) A person is guilty of terrorizing if he communicates to any person a threat to

commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, and the natural and probable consequence of such a threat, is to place the person to whom the threat is communicated or the person threatened in reasonable fear that crime will be committed.

(b) Terrorizing is a felony of the third degree.

§ 19.69. Definitions.

Unless otherwise indicated, as used in § 19.70:

(a) *Harasses* or *harassment* means a knowing and willful course of conduct, whether physical, verbal, written, electronic, telephonic, via or by use of a computer, computer network, computer system, telephone network, data network, text message, instant message, or otherwise, directed at a specific person which alarms, annoys, or distresses the person, and which serves no legitimate purpose. Such course of conduct must be of a nature to cause a reasonable person to suffer substantial emotional distress, and must cause substantial emotional distress.

(b) *Course of conduct* means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Constitutionally and statutorily protected activity, including, but *not* limited to, picketing as a result of a labor dispute, is *not* included in this definition.

(c) *Credible threat* means any threat, physical or verbal, overtly or subtly manifested, constituting a threat with the intent and apparent ability to carry out the threat with the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. Such threatening advance must be against the life of, or a threat to cause bodily injury to, the person threatened or to a member of his or her immediate family.

(d) *Computer* means any electronic, magnetic, optical, electrochemical, *or* other high-speed data processing device performing logical, arithmetic, *or* storage functions, and includes all computer equipment connected *or* related to such a device in a computer system *or* computer network, but *shall not* include an automated typewriter or typesetter, a portable hand-held calculator, *or* other similar device.

(e) *Computer network* means two (2) or more computers or computer systems interconnected by communication lines, including microwave, electronic, or any other form of communication.

(f) *Computer system* means a set of interconnected computer equipment intended to operate as a cohesive system.

§ 19.70. Stalking.

(a) A person is guilty of simple stalking if he or she willfully, maliciously, and repeatedly, follows or harasses another person or ~~who~~ makes a credible threat with intent to place that person or a member of his or her immediate family in fear of death or bodily injury.

(b) A person is guilty of advanced stalking if he or she violates Subsection (a) of this Section when there is a temporary restraining order or an injunction or both or any other court order in effect prohibiting the behavior described in that Subsection against the same party.

(c) A person is guilty of advanced stalking if he or she violates Subsection (a) of this Section a second or subsequent time against the same victim, within seven (7) years of a prior conviction under that Subsection, and involving an harassment or a credible threat of violence, as defined in §19.69 of this Chapter.

(d) Simple stalking is a felony of the third degree.

(e) Advanced stalking is a felony of the second degree.

(f) This Section *shall not* apply to conduct which occurs during labor picketing.

§ 19.80. Strangulation; Defined & Punished.

(a) A person is guilty of strangulation if he knowingly or intentionally, against the will of another, impedes the normal breathing or circulation of the blood of another by applying pressure to the throat or neck or by blocking the nose or mouth of another.

(b) Strangulation is a felony of the third degree; provided, that any person convicted of strangulation shall not be eligible for work release or educational programs outside the confines of prison.

§ 19.81. 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 of the third degree~~ misdemeanor.

§ 19.82. Interfering with the Reporting of Criminal sexual conduct; Defined and Punished.

(a) Any person commits the crime of interfering with the reporting of criminal sexual conduct if the person:

(1) commits an act of criminal sexual conduct or assists in or abets any act of criminal sexual conduct, as enumerated in Chapter 25 of this Title; and

(2) intentionally, knowingly, or recklessly prevents or attempts, either directly or through other persons, to prevent the victim of or a witness to that act of criminal sexual conduct from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement officer or other official.

(b) Commission of, or assisting in or abetting, a crime of criminal sexual conduct under Chapter 25 of this title is a necessary element of the crime of interfering with the reporting of criminal sexual conduct.

(c) Interference with the reporting of crimes of criminal sexual conduct is a felony of the third degree.

Section 10. Chapter 22 (Kidnapping and Related Offenses), Title 9, Guam Code Annotated was reviewed and no changes are recommended to this Chapter.

Section 11. Chapter 25, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 25
SEXUAL OFFENSES

§ 25.10. Definitions.

(a) As used in this Chapter:

(1) "Actor" means a person accused of criminal sexual conduct~~;~~.

(2) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act.

(A) A person who is mentally incapacitated or physically helpless as defined by this Chapter cannot consent to a sexual act.

(B) Corroboration of the victim's testimony is not required to show lack of consent.

(3) "Force" or "Coercion" includes, but is not limited to, any of the following circumstances:

(A) when the actor overcomes the victim through the actual application of physical force or physical violence;

(B) when the actor coerces the victim to submit by threatening to use force or violence on the victim and the victim believes that the actor has the present ability to execute these threats;

(C) when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person and the victim believes that the actor has the ability to execute this threat. As used in this Subsection, to retaliate includes threats of physical punishment, kidnapping, or extortion;

(D) when the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable; or

(E) when the actor, through concealment or by the element of surprise, is able to overcome the victim.

(4) "Intimate Parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being~~;~~.

(5) "Mentally Impaired" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct~~;~~.

(6) "Mentally Incapacitated" means

(A) that a person is rendered temporarily incapable of appraising or

controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent; or

(B) that a person is voluntarily under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct.

(7) "Physically Helpless" means that a person is

(A) unconscious~~,~~;

(B) asleep~~,~~;

(C) unable to withhold consent or to withdraw consent because of a physical condition~~,~~; or

(D) for any other reason, is physically unable to communicate unwillingness to an act~~;~~.

(8) "Personal Injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ~~;~~.

(9) "Sexual Contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification~~;~~.

(10) "Sexual Penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required ~~and~~;.

(11) "Victim" means the person alleging to have been subjected to criminal

sexual conduct.

(12) "Consanguinity or Relationship by blood" means a 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.

(13) "Affinity" is the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other. The method of computing degrees of affinity is the same method as computing degrees of consanguinity.

(14) "Dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

(A) the length of the relationship;

(B) the nature of the relationship; and

(C) the frequency and type of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship."

(15) Adoption refers to the act where an adult formally becomes the guardian of a child and incurs the rights and obligations of a parent.

(16) "Cunnilingus" is the touching of the urethral opening, vaginal opening, or labia with the actor's mouth.

§ 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:

(1) the victim is under fourteen (14) years of age;

(2) the victim is at least fourteen (14) but less than sixteen (16) years of age and any of the following circumstances exists:

(A) the actor is a member of the same household as the victim;

(B) the actor is related to the victim by blood, adoption or affinity to the fourth degree to the victim, or

(C) the actor is in a position of authority over the victim and used this authority to coerce the victim to submit;

(D) the actor is a teacher, substitute teacher, intern/student teacher or administrator of the public school, nonpublic school, school district, in which that other person is enrolled;

(E) the actor is an employee or a contractual service provider of the public school, nonpublic school, or school district, in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of the government of Guam or government of the United States assigned to provide any service to that public school, nonpublic school, or school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person;

(F) the actor is an employee, contractual service provider, or volunteer of a child care facility, or a person licensed or lawfully authorized to operate a foster care facility or home or a foster care group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency;

(G) the actor is an employee, contractual service provider, or volunteer of a social services organization, victims' advocacy organization, youth correctional or detention facility, drug treatment facility or medical,

psychiatric or psychological treatment facility and the sexual penetration occurs during the period of that other person's residency; or

(H) the actor is in a dating relationship with a member of the victim's household.

(3) sexual penetration occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(A) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless; or

(B) the actor uses force or coercion to accomplish the sexual penetration.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration; and

(7) the actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the first degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.15(a) shall be sentenced to a minimum of fifteen (15) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole if the victim is twelve (12) years of age or older at the time that the crime was committed; or a minimum of twenty-five (25) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole if the victim is under the age of twelve (12) years old at the time that the crime was committed. The term imposed shall not be suspended, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor

probation be imposed in lieu of said minimum term; nor shall work release or educational programs outside the confines of prison be granted; nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such sentence shall include a special parole term of not less than life with mandatory lifetime monitoring by the Parole Office, in addition to such time of imprisonment

(c) Any person convicted of criminal sexual conduct under § 25.15(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration, as defined in § 25.10 of this Chapter shall be sentenced to a minimum of twenty-five (25) years imprisonment and may be sentenced to life imprisonment without the possibility of parole. Said term shall not be suspended as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

§ 25.20. Second Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(1) that other person is under fourteen (14) years of age;

(2) the victim is at least fourteen (14) but less than sixteen (16) years of age and any of the following circumstances exist:

(A) the actor is a member of the same household as the victim;

(B) the actor is related to the victim by blood, adoption or affinity to the fourth degree to the victim; or

(C) the actor is in a position of authority over the victim and used this authority to coerce the victim to submit;

(D) the actor is a teacher, substitute teacher, intern/student teacher or

administrator of the public school, nonpublic school, school district, in which that other person is enrolled;

(E) the actor is an employee or a contractual service provider of the public school, nonpublic school, school district, in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of the government of Guam or government of the United States assigned to provide any service to that public school, nonpublic school, school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person;

(F) the actor is an employee, contractual service provider, or volunteer of a child care facility, or a person licensed or lawfully authorized to operate a foster care facility or home or a foster care group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency;

(G) the actor is an employee, contractual service provider, or volunteer of a social services organization, victims' advocacy organization, youth correctional or detention facility, drug treatment facility or medical, psychiatric or psychological treatment facility and the sexual penetration occurs during the period of that other person's residency; or

(H) the actor is in a dating relationship with a member of the victim's household.

(3) sexual contact occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(A) the actor knows or has reason to know that the victim is mentally

impaired, mentally incapacitated, or physically helpless; or

(B) the actor uses force or coercion to accomplish the sexual contact.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact; and

(7) the actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the second degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.20(a) shall be sentenced to a minimum of five (5) years to a maximum of fifteen (15) years imprisonment without the possibility of parole if the victim is twelve (12) years of age or older at the time that the crime was committed; or a minimum of ten (10) years to a maximum of twenty (20) years imprisonment if the victim is under the age of twelve (12) years old at the time that the crime was committed. The term imposed shall not be suspended, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of said minimum term; nor shall work release or educational programs outside the confines of prison be granted; nor shall parole be granted; nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such sentence shall include a special parole term of not less than life with mandatory lifetime monitoring by the Parole Office, in addition to such time of imprisonment.

(c) Any person convicted of criminal sexual conduct under § 25.20(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 shall be

sentenced to a minimum of fifteen (15) years imprisonment and may be sentenced to life imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted."

§ 25.25. Third Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(1) that other person is at least fourteen (14) years of age and under sixteen (16) years of age;

(2) force or coercion is used to accomplish the sexual penetration; and

(3) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the third degree is a felony of the second degree.

(c) Any person previously convicted of criminal sexual conduct under § 25.25(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 of this Chapter shall be sentenced to ten (10) years imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

(d) Close-in-Age Mitigation.

Notwithstanding subsection (c), if the victim is fourteen (14) or fifteen (15) and the offender was not more than (4) years older than the victim, and the act was consensual as defined in § 25.10(a)(2) the offense shall remain a felony of the second

degree, and the offender shall not be required to register under the Sex Offender Registration and Notification Act pursuant to § 89.01(d)(8).

(e) Any person previously convicted of criminal sexual conduct under § 25.25(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 of this Chapter shall be sentenced to ten (10) years imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

§ 25.30. Fourth Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exists:

(1) force or coercion is used to accomplish the sexual contact;

(2) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless;

(3) the victim is at least fourteen (14) years of age and under sixteen (16) years of age.

(b) Criminal sexual conduct in the fourth degree is a felony of the third degree, except, where the actor is a first time offender and the victim is eighteen (18) years of age or older, it shall be a misdemeanor.

§ 25.35. Assault with Intent to Commit Criminal Sexual Conduct.

Assault with intent to commit criminal sexual conduct involving penetration is a felony in a third degree.

§ 25.40. Victim's Testimony Need Not be Corroborated.

The testimony of a victim need not be corroborated in prosecutions under §§ 25.15 through 25.35.

§ 25.45. Resistance Not Required.

A victim need not resist the actor for a proper prosecution under §§ 25.15 through 25.35.

§ 25.50. Interfering with the Reporting of Criminal Sexual Conduct.

(a) Any person commits the crime of interfering with the reporting of criminal sexual conduct if the person:

(1) commits any act of criminal sexual conduct or assists in or abets any act of criminal sexual conduct, as enumerated in this Chapter and

(2) intentionally, knowingly, or recklessly prevents or attempts, either directly or through other persons, to prevent the victim of or a witness to that act of criminal sexual conduct from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement officer or other official.

(b) Commission of, or assisting in or abetting a crime of criminal sexual conduct under this chapter is a necessary element of the crime of interfering with the reporting of criminal sexual conduct.

(c) Interference with the reporting of crimes of criminal sexual conduct is a felony of the third degree.

Section 12. Chapter 25A, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 25A

SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY

ARTICLE 1

ELECTRONIC DISPLAY AND ENTICEMENT

§ 25A101. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that there is a critical need to clearly and explicitly define material that is obscene, material that is pornographic for minors and child pornography, as well as to update Guam's laws to protect children from internet predators. The internet is arguably the most important learning tool of the Twenty-first (21st) Century. Unfortunately, the same internet also poses one of the greatest threats to child safety.

It is the intent of I Liheslatura to ensure that our laws are strong enough to adequately protect Guam's children from online predators and child pornography and to severely punish the offenders.

§ 25A102. Indecent Electronic Display to a Child.

(a) Any person who intentionally masturbates or intentionally exposes the genitals of him or herself, or of another, in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service, and who knows or should know or has reason to believe that the transmission is viewed on a computer or other device capable of electronic data storage or transmission, by:

(1) a minor known by the person to be under the age of eighteen (18) years;

(2) 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

(3) another person who represents him or herself to be under the age of eighteen (18) years is guilty of indecent electronic display to a child.

(b) Indecent electronic display to a child is a Third Degree Felony.

~~(c) 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.~~

§ 25A103. 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~~B) with another person who represents him or herself to be under the age of eighteen (18) years,

(2) with the intent to promote or facilitate the commission of an unlawful sexual act or sexual offense in violation of Guam law, or another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, is guilty of electronic enticement of a child as a Third Degree Felony.

(b) Electronic enticement of a child under this Section is a Third Degree Felony.

(c) Each separate use of a computer online service, internet service, or any other device capable of electronic data storage or transmission wherein an offense described in this Section is committed may be charged as a separate offense.

~~(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.~~

§ 25A104. Electronic Enticement of a Child as a Second Degree Felony.

(a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission:

(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~~B) with another person who represents him or herself to be under the age of eighteen (18) years,

(2) with the intent to promote or facilitate the commission of a felony, or another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, agrees to meet with the minor, or with another person who represents him or herself to be a minor under the age of eighteen (18) years; and

(3) intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child as a Second Degree Felony.

(b) Electronic enticement of a child under this Section is a Second Degree Felony.

§ 25A105. Electronic Enticement of a Child as a First Degree Felony.

(a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission:

(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~~B) with another person who represents him or herself to be under the age of eighteen (18) years,

(2) with the intent to promote or facilitate the commission of a felony:

(A) that is murder or aggravated murder as defined in Title 9 GCA Chapter 16;

(B) that is a first degree felony; or

(C) that is another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, agrees to meet with the minor, or with another person who represents him or herself to be a minor under the age of eighteen (18) years; and

(3) intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child as a First Degree Felony.

(b) Electronic enticement of a child under this Section is a First Degree Felony.

§ 25A106. Electronic Enticement; No Defense.

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.

ARTICLE 2

CHILD PORNOGRAPHY

§ 25A201. Definitions.

As used in this Chapter:

(a) Child pornography means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(1) the pornographic production of the visual representation involves the use of a minor engaging in sexual conduct; or

(2) the pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

(b) Community standards means the standards of Guam.

(c) Computer means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes, all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

(d) Computer equipment means any equipment or devices, including all input, output, processing, storage, software, or communications facilities, intended to interface with the computer.

(e) Computer network means two (2) or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

(f) Computer program or software means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

(g) Computer services includes, but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

(h) Computer system means a set of interconnected computer equipment intended to operate as a cohesive system.

(i) Data means information, facts, concepts, software, or instructions prepared for use in a computer, computer system, or computer network.

(j) Lascivious means tending to incite lust to deprave the morals with respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

(k) Material means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

(l) Minor means any person less than eighteen (18) years old.

(m) Pornographic shall have the same meaning as in Title 9 GCA Chapter 28, Article 2.

(n) Sadomasochistic abuse means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(o) Sexual conduct means acts of sexual penetration, sexual contact, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

(p) Visual representation includes, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(q) Disseminate means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

§ 25A202. Possession of Child Pornography.

(a) A person commits the offense of possession of child pornography if, knowing or having reason to know its character and content, the person possesses:

(1) child pornography;

(2) any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or

(3) any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Possession of child pornography under this Section is a Second Degree Felony.

§ 25A203. Dissemination of Child Pornography.

(a) A person commits the offense of dissemination of child pornography if, knowing or having reason to know its character and content, the person:

(1) disseminates child pornography;

(2) reproduces child pornography with intent to disseminate;

(3) disseminates any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography;

(4) disseminates any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(5) possesses ten (10) or more images of any form of child pornography regardless of content, and the content of at least one (1) image contains one (1) or more of the following:

(A) a minor who is younger than the age of fourteen (14);

(B) sadomasochistic abuse of a minor;

(C) sexual penetration of a minor; or

(D) bestiality involving a minor.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Dissemination of child pornography under this Section is a First Degree Felony.

§ 25A204. Production of Child Pornography.

(a) A person commits the offense of production of child pornography if, knowing or having reason to know its character and content, the person produces, manufactures, reproduces, copies, photographs, films, videotapes, video captures, creates, directs, promotes, advertises, publishes, issues, or presents to show any visual depiction of child pornography as defined in § 25A201 of this Chapter, or any pornographic material where:

(1) the production of such visual depiction involves the use of a minor engaging in sexual conduct;

(2) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexual conduct;

(3) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct;

(4) there is visual material containing the lewd or lascivious display of a minor's intimate area underneath clothing or sexual conduct of a minor; or

(5) there is visual material containing the display of a minor's intimate area underneath clothing that is prohibited under 9 GCA § 70.35.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Production of child pornography is a First Degree Felony.

Section 13. Chapter 31, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 31

OFFENSES AGAINST THE FAMILY

§ 31.10. Bigamy; Defined & Punished.

(a) A married person is guilty of *bigamy*, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(1) the defendant believes that the prior spouse is dead;

(2) the defendant and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the defendant to be alive;

(3) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the defendant does not know that judgment to be invalid; or

(4) the defendant reasonably believes that he is legally eligible to remarry.

(b) A person is guilty of bigamy if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy.

§ 31.15. Incest: Defined & Punished.

A person is guilty of *incest,* a misdemeanor, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. Cohabit means to live together under the representation or appearance of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

§ 31.20. Abortion.

(a) *Abortion* means the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(b) An *abortion* may be performed:

(1) by a physician licensed to practice medicine this Territory or by a physician practicing medicine in the employ of the government of the United States;

(2) in the physician's adequately equipped medical clinic or in a hospital approved or operated by the United States or this Territory; and

(3) (A) within 13 weeks after the commencement of the pregnancy; or

(B) within 26 weeks after the commencement of the pregnancy if the physician has reasonably determined using all available means:

(i) that the child would be born with a grave physical or mental defect; or

(ii) that the pregnancy resulted from rape or incest; or

(C) at any time after the commencement of pregnancy if the physician reasonably determines using all available means that there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother.

§ 31.21 Illegal Abortions Punished.

Any person performing an abortion in circumstances other than permitted by § 31.20 shall be guilty of a third degree felony.

§ 31.22 Refusal to Participate in Abortion.

(a) (1) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any person employed or with staff privileges at a hospital, facility or clinic to directly participate in the induction or performance of an abortion, if such employee or other person has filed a written statement with the employer or the hospital, facility or clinic indicating a moral, ethical or religious basis for refusal to participate in the abortion.

(2) No such employee or other person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his refusal to participate in an abortion. No such employee of a hospital, facility or clinic which does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of such person's participation in the performance of an abortion in other than such hospital, facility or clinic.

(3) No employer shall refuse to employ any person because of such person's refusal for moral, ethical or religious reasons to participate in an abortion, unless such person would be assigned in the normal course of business of any hospital, facility or clinic to work in those parts of the hospital, facility or clinic where abortion patients are cared for. No provision of this Chapter prohibits any hospital, facility or clinic which permits the performance of abortions from inquiring whether the employee or prospective employee would advance a moral, ethical or religious basis for refusal to participate in an abortion before hiring or assigning such a person to that part of a hospital, facility or clinic where abortion patients are cared for.

(4) The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subsection shall not form the basis of any claim for damages.

(b) No hospital, facility, or clinic shall refuse staff privileges to a physician because of such physician's refusal to participate in the performance of an abortion for moral, ethical, or religious reasons.

(c) (1) Nothing in this Chapter shall require a non-profit hospital or other facility or clinic which is operated by a religious corporation or other religious organization or any administrative officer, employee, agent, or member of the governing board thereof, to perform or permit the performance of an abortion in such facility or clinic or to provide abortion services. No such non-profit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act.

(2) The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic which does not permit the performance of abortions on its premises shall post notice of such proscription in an area of such facility or clinic which is open to patients and prospective admittees.

(d) (1) This section shall not apply to medical emergency situations and spontaneous abortions.

(2) Any violation of this section is a misdemeanor.

§ 31.30. Child Abuse; Defined & Punished.

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

(1) he subjects a child to cruel mistreatment; or

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

~~(2)~~(3) having a child in his care or custody or under his control, he:

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

~~(B) subjects that child to cruel mistreatment; or~~

~~(C)~~(B) unreasonably causes or permits the physical or, emotional health of that child to be endangered~~.~~ or unreasonably 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.

(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).

(d) As used in this Section, neglect of a child shall consist of any of the following acts by anyone having the custody or control of the child:

(1) intentionally 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

(2) failure to do or permit to be done any act necessary for the child's physical or moral well-being.

~~**§ 31.35. Reporting of Suspected Child Abuse to Department of Public Health and Social Services.**~~

~~**[Repealed]**~~

~~**§ 31.37. Registry of Cases of Suspected Child Abuse Reported to Department of Public Health and Social Services.**~~

~~**[Repealed]**~~

§ 31.40. Abuse of An Incompetent; Defined & Punished.

(a) A person is guilty of *abuse of an incompetent* when:

(1) he subjects an incompetent to cruel mistreatment; or

(2) having an incompetent in his care of custody or under his control, he:

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

(B) subjects that incompetent to cruel mistreatment; or

(C) unreasonably causes or permits the physical or emotional health of that incompetent to be endangered.

(b) As used in this Section, *incompetent* means a person who is unable to care for himself because of old age, or because of physical or mental illness, disease or defect.

(c) *Abuse of an incompetent* 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.

§ 31.45. Failure to Provide; Defined & Punished.

(a) A person is guilty of *failure to provide* when having a spouse, child or indigent parent whom he is legally obliged to support, he knowingly fails to furnish that person with necessary support.

(b) As used in this Section, support includes food, clothing, shelter, medical attention and education.

(c) As used in this Section, child includes a child conceived but not yet born.

§ 31.50. Surety for Support.

(a) If at any time before sentencing under any prosecution pursuant to § 31.45, the defendant appears before the court and enters into any undertaking with sufficient sureties in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will pay to the person having custody of such spouse, child or parent, such sum per month as may be fixed by the court to provide necessary food, clothing, shelter or medical attendance or other remedial care, then the court may suspend proceedings or sentence therein.

(b) The undertaking provided pursuant to Subsection (a) shall be valid and binding for one (1) year, or such lesser time as the court shall fix.

(c) Upon the failure of the defendant to comply with the undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had in the action or why sentence should not be imposed, whereupon the court may proceed with the action, or pass sentence or for good cause shown may modify the order and take a new undertaking and further suspend proceedings or sentence for a like period.

§ 31.55. Fine Imposed May be Used for Support.

In any case where there is a conviction of an offense under § 31.45 and a sentence to pay a fine, such fine may be directed by the court to be paid in whole or in part to the spouse, child or parent or guardian or custodian of such person.

~~§ 31.60. Criminal Spouse Abuse: Penalty.~~

~~[Repealed]~~

~~§ 31.65. Curfew Hours for Minors.~~

~~(a) Definitions. As used in this Section:~~

~~(1) *Curfew Hours* means:~~

~~(A) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, *or* Thursday until 6:00 a.m. of the following day; and~~

~~(B)12:01 a.m. until 6:00 a.m. on any Saturday *or* Sunday.~~

~~(2) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, *but is not limited to*, a fire, a natural disaster, an automobile accident, *or* any situation requiring immediate action to prevent serious bodily injury *or* loss of life.~~

~~(3) *Establishment* means any privately-owned place of business operated for a profit to which the public is invited, including, *but not limited to,* any place of amusement *or* entertainment.~~

~~(4) *Guardian* means:~~

~~(A) a person who, under court order, is the guardian of the person of a minor; or~~

~~(B) a public *or* private agency with whom a minor has been placed by a court.~~

~~(5) *Minor* means any person under seventeen (17) years of age.~~

~~(6) *Operator* means any individual, firm, association, partnership, or corporation operating, managing, *or* conducting any establishment. The term~~

~~includes the members *or* partners of an association *or* partnership and the officers of a corporation.~~

~~(7) *Parent* means a person who is:~~

~~(A) a natural parent, adoptive parent, *or* step-parent of another person; or~~

~~(B) at least eighteen (18) years of age and authorized by a parent *or* guardian to have the care and custody of a minor.~~

~~(8) *Public Place* means any place to which the public *or* a substantial group of the public has access and includes, *but is not limited to*, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.~~

~~(9) *Remain* means to:~~

~~(A) linger *or* stay; *or*~~

~~(B) fail to leave premises when requested to do so by a peace officer *or* the owner, operator, *or* other person in control of the premises.~~

~~(10) *Serious Bodily Injury* means bodily injury that creates a substantial risk of death *or* that causes death, serious permanent disfigurement, *or* protracted loss *or* impairment of the function of any bodily member *or* organ.~~

~~(b) Offenses.~~

~~(1) A minor commits an offense *if* he remains in any public place *or* on the premises of any establishment on Guam during curfew hours.~~

~~(2) A parent *or* guardian of a minor commits an offense *if* he knowingly permits, *or* by insufficient control allows, the minor to remain in any public place *or* on the premises of any establishment on Guam during curfew hours.~~

~~(3) The owner, operator, *or* any employee of an establishment commits an offense *if* he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.~~

~~(c) Defenses.~~

~~(1) It is a defense to prosecution under Subsection (b) that the minor was:~~

~~(A) accompanied by the minor's parent *or* guardian;~~

~~(B) on an errand at the direction of the minor's parent *or* guardian, without any detour *or* stop;~~

~~(C) engaged in an employment activity, *or* going to *or* returning home from an employment activity, without any detour *or* stop;~~

~~(D) involved in an emergency;~~

~~(E) on the sidewalk abutting the minor's residence *or* abutting the residence of a next-door neighbor *if* the neighbor did not complain to the police department about the minor's presence;~~

~~(F) attending *or* traveling to or returning home without detour from an official school, religious, *or* other recreational activity supervised by adults and sponsored by the government of Guam, a civic organization, *or* another similar entity that takes responsibility for the minor, *or* going to *or* returning home from, without any detour *or* stop, an official school, religious, *or* other recreational activity supervised by adults and sponsored by the government of Guam, a civic organization, *or* another similar entity that takes responsibility for the minor;~~

~~(G) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; *or*~~

~~(H) married *or* had been married, enlisted in a branch of the United States Armed Forces *or* the National Guard *or* had disabilities of minority removed in accordance with Article 3 of Chapter 4 of Title 19 GCA.~~

~~(2) It is a defense to prosecution under Subsection (b)(3) that the owner, operator, *or* employee of an establishment promptly notified the police~~

~~department that a minor was present on the premises of the establishment during curfew hours and refused to leave.~~

~~(d) Enforcement. Before taking any enforcement action under this Section, a police officer *shall* ask the apparent offender's age and reason for being in the public place. The officer *shall* not issue a citation, take into custody *or* make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (c) is present.~~

~~(e) Penalties.~~

~~(1) A person who violates a provision of this Chapter is guilty of a separate offense for each day *or* part of a day during which the violation is committed, continued, *or* permitted. Each offense, upon conviction, is punishable by a fine *not to exceed* Five Hundred Dollars ($500).~~

~~(2) When required by §5104 of Title 19 GCA, as amended, the Superior Court *shall* waive original jurisdiction over a minor who violates Subsection (b)(1) of this Section and *shall* refer the minor to juvenile court.~~

§ 31.70. Leaving Children Unattended or Unsupervised in Motor Vehicles; Penalty; Authority of Law Enforcement Officer.

(a) A parent, legal guardian, or other person, at least twelve (12) years of age, responsible for a child five (5) years of age or younger, may not leave such child unattended or unsupervised in a motor vehicle:

(1) For a period in excess of fifteen (15) minutes; or

(2) For any period of time if the motor of the vehicle is running or the health of the child is in danger.

(b) Any person who knowingly violates the provisions of Subsection (a)(1) commits a petty misdemeanor.

(c) Any person who violates the provisions of Subsection (a)(2) is guilty of a

violation, punishable by a fine not less than Fifty Dollars ($50) and not more than Five Hundred Dollars ($500).

(d) Any person who knowingly violates Subsection (a) and in so doing causes serious bodily injury, permanent disability, or permanent disfigurement to a child commits a felony of the third degree.

(e) Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of Subsection (a) may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.

(1) If the child is removed from the immediate area, notification should be placed on the vehicle.

(2) The child shall be remanded to the custody of the Child Protective Services Division pursuant to Title 19 GCA, Chapter 13, unless the law enforcement officer is able to locate the parents or legal guardian or other person responsible for the child.

Section 14. Chapter 34, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 34

ARSON, NEGLIGENT BURNING, CRIMINAL MISCHIEF

§ 34.10. Definitions.

As used in this Chapter:

(a) *Property* means any form of real property or tangible personal property which is capable of being damaged or destroyed.

(b) *Habitable Property* means any structure, vehicle or vessel adapted for the accommodation or occupation of persons.

(c) *Property* is that of another if anyone other than the defendant has a possessory or proprietary interest in any portion thereof.

(d) *Forest land* means any brush covered land, cut-over land, forest, grasslands, jungle, or woods.

§ 34.20. Aggravated Arson; Defined & Punished.

(a) A person is guilty of aggravated arson if he recklessly damages any habitable property by means of fire or explosives in conscious disregard of a substantial risk that at the time of such conduct a person may be in such habitable property, whether or not a person is actually present.

(b) Aggravated arson is a second degree felony. In the case of aggravated arson 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.

§ 34.30. Arson; Defined & Punished.

(a) A person is guilty of *arson* if under circumstances not amounting to aggravated arson he starts a fire or causes an explosion, whether on his own property, another's property, or forest land:

(1) with the intention of defrauding an insurer; or

(2) in reckless disregard of a risk that his conduct will damage or destroy the property of another; or

(3) in reckless disregard of a risk that his conduct will damage or destroy forest land.

(b) Arson is a third degree felony.

§ 34.40. Negligent Burning; Defined & Punished.

(a) A person is guilty of *negligent burning* if he:

(1) negligently starts a fire or causes an explosion whether on his own property, another's property, or forest land, and thereby negligently endangers human life, or negligently places the property of another, or forest land, in danger of damage or destruction; or

(2) having started a fire, whether negligently or not, and knowing that its spread will endanger the life or property of another, or forest land, either fails to take reasonable measures to put out or control the fire, or fails to give a prompt fire alarm.

(b) Negligent burning is a misdemeanor. If a person guilty of negligent burning is offered Alternative Service Restitution in accordance with Article 6 of Chapter 80, 9 GCA, the restoration of forest lands is an allowable form of restitution or alternative community service.

§ 34.50. Criminal Mischief; Defined.

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.~~

§ 34.60. Criminal Mischief; Punished.

~~(a) A violation of subsections (b) or (d) of § 34.50 is a third degree felony.~~

(~~b~~a) A violation of ~~subsection (a) of~~ § 34.50 is a second degree felony if the defendant's conduct results in 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~~ results in 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~~ results in pecuniary loss of Five Hundred Dollars ($500) or more but less than Two Thousand Five Hundred Dollars ($500.00) ~~in excess of Fifty Dollars ($50.00)~~, and a petty misdemeanor if the defendant's conduct ~~causes or is intended to cause~~ results in 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.~~

(b)~~(1)~~ 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.

~~(2)~~ In addition to any punishment listed in subsection (~~c~~a), 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 re-paint 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~~c) The court may order that any person punished under ~~§ 34.60(c) or~~ § 34.70~~, Title 9, Guam Code Annotated~~ or 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.

§ 34.70. Graffiti Prohibited.

(a) Definitions. For the purpose of this section, the following terms apply:

(1) "Broad-~~t~~Tipped ~~i~~Indelible ~~m~~Marker" means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half inch or greater.

(2) "*Bona ~~f~~Fide* ~~e~~Evidence of ~~m~~Majority" means a document issued by a federal, state, county or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

(3) "Owner" means any and all persons with legal and/or equitable title to real property in Guam as their names and addresses are shown upon the records of the Department of Revenue of Taxation or the Department of Land Management.

(4) "Supervising Adult" means an individual eighteen (18) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.

(5) “Used” or “~~i~~Intended to be ~~u~~Used” includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.

(b) No person shall write, paint or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property owned, operated or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm or corporation unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained.

(c) Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad-tipped indelible marker with the intent to violate the provisions of this section.

(d) Possession of spray paint or broad-tipped indelible markers by minors on public property is prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container or spray paint can or broad-tipped indelible marker while on public property, highway, street, alley, or way except in the company of a supervising adult.

(e) Possession of spray paint or broad-tipped indelible markers by minors on private property is prohibited without consent of the owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession of the aerosol container or marker while on his or her property.

(f) Any person violating subsections (b), (c), (d), or (e) shall be punished by a fine of two thousand dollars ($2,000.00) for the first offense, and four thousand dollars ($4,000.00) for each subsequent offense or by imprisonment for a term not to exceed one hundred eighty (180) days, or by both fine and imprisonment at the

discretion of the court. In the case of a minor, the parents or legal guardian shall be responsible for payment of all fines. Failure of the parents or legal guardian to make payment will result in the filing of lien on the parents or legal guardian's property to include the fine and court costs.

(g) In addition to any punishment ordered under subsection (f), the court shall order any person found in violation of subsections (b), (c), (d) or (e) to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court. Where the defendant is a minor, the parents or legal guardian shall be jointly and severally liable with the minor to make such restitution.

(h) In addition to any punishment listed in subsections (f) and restitution ordered under subsection (g) the court shall order any person found in violation of subsection (b), (c), (d) or (e) to perform monitored community service in the removal of graffiti of not less than two hundred fifty (250) hours and not more than five hundred (500) hours.

(i) In addition to any punishment listed in subsections (f), (g), and (h), any adult convicted for violating subsections (b), (c), (d), or (e) is guilty of a misdemeanor punishable by imprisonment for not less than a mandatory one hundred twenty (120) days.

(j) All personal property, including, but not limited to, automobiles and bicycles, used or intended to be used in violating subsections (b), (c), (d) or (e) shall be forfeitable to Guam. In any forfeiture under this section, the Court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by the laws of Guam, the Organic Act, and the U.S. Constitution.

(k) No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen years (18) shall buy

any aerosol container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.

(l) Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers *shall*:

(1) Place a sign in clear public view at or near the display of such products stating:

'GRAFFITI IS A CRIME. ANY PERSON DEFACING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO ONE HUNDRED EIGHTY (180) DAYS AND/OR A FINE UP TO FOUR THOUSAND DOLLARS ($4,000.00).'

(2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers which states:

"IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF TWO HUNDRED FIFTY DOLLARS ($250.00)."

(m) Violation of subsection (l) shall result in a civil penalty of two hundred fifty dollars ($250.00) for a first offense and five hundred dollars ($500.00) for subsequent offenses. When three (3) violations of subsection (l) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two

(2) years. Violation of such injunction shall be punished by a fine of two hundred fifty hundred dollars ($250.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers until payment of the fine, attorney's fees and costs.

(n) In addition to any punishment ordered under Subsection (f), (g), (h), (i) and (j), the court shall immediately, upon conviction of an offender charged with the defacement of property, revoke the license or instruction permit of any driver in violation of this Section subject to a period of time described hereafter:

(1) after one (1) conviction, six (6) months;

(2) after a second or subsequent conviction, one (1) year for each conviction.

Any person who was convicted of any offense as described in this Act upon being eligible to receive a license or instruction permit, shall not be eligible to receive a license or instruction permit until the entire penalty period has elapsed.

Any prior convictions resulting in the revocation of a driver's license or instruction permit shall not run concurrently with any existing or subsequent suspension, revocation, cancellation or denial which is provided for by law.

§ 34.80. Use of Fines Collected.

Effective upon the enactment of this Section, all monies collected by the enforcement of 9 GCA §§ 34.60 or 34.70 shall be deposited in the Appointed Counsel Trust Fund established under 7 GCA § 22111 for fees and expenses related to the legal defense of indigent persons and for other purposes as set forth by the Judicial Council.

§ 34.90. Destruction of Property: Penalty.

A person commits a misdemeanor if, he without the written permission of the owner or of the owner's agent or of the person in lawful possession:

(a) Maliciously tears down, damages, mutilates or destroys any sign, signboard or notice placed upon, or affixed to any property that belongs to the government of Guam, which sign, signboard or notice is intended to indicate or designate a road or highway or is intended to designate speed limits or a traffic hazard or is intended to direct travelers from one point to another or is intended to advise of prohibited entry or relates to fires, fire control, trespassing or other matters involving the protection of the property;

(b) Willfully opens, tears down or otherwise destroys any fence on the land of another or willfully removes, injures, cuts or tampers with any lock or any locked gate or any locked chain or any other locked barrier on any road, track or trail leading into lands of another or maliciously tears down, mutilates or destroys any sign, signboard or other notice forbidding shooting on public or private property; or

(c) Enters any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing or injuring any lawful business or occupation carried on by the owner of such land, his agent or by the person in lawful possession; or

(d) Enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, any other or enters upon uncultivated and unenclosed lands belonging to, or occupied by, any other where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries on all roads and trails entering such lands:

(1) For the purpose of hunting, shooting, killing or destroying any animal or bird upon such lands; or

(2) Discharges any firearms upon such land or lands; or

(3) Refuses or fails to leave such lands immediately upon being requested to leave by the owner of such land, his agent or by the person in lawful possession; or

(4) Tears down, mutilates or destroys any sign, signboard or notice forbidding entry on such lands.

(e) Enters upon any lands declared closed to public entry by the Government where such closed lands are posted with notices declaring such closure at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through such lands declaring the lands closed to public entry or stating "no trespassing." The Director of the Department of Land Management, in compliance with the Administrative Adjudication Act, is authorized to designate as closed to public entry and post "no trespassing" signs on any portion or portions of property belonging to the Government upon his determination that such designation is reasonably necessary for the purpose of public safety, preservation of government property, conservation of resources, fire prevention, safety of adjoining property owners or prevention of nuisances.

Section 15. Chapter 37, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 37
BURGLARY AND HOME INVASION
ARTICLE 1
BURGLARY

§ 37.10. Definitions: Ref. to § 16.10.

As used in this Chapter:

(a) Habitable Property has the meaning provided by § 34.10 and includes any such property whether or not a person is actually present therein.

(b) Night means the period between thirty (30) minutes past sunset and thirty

(30) minutes before sunrise.

(c) Deadly Weapon has the meaning provided by §16.10, Title 9, Guam Code Annotated.

(d) Motor Vehicle, Semi-Trailer, Trailer, Truck, Truck-Tractor, Vehicle, and Vehicle Combination are defined by § 5101, Title 16, Guam Code Annotated; and Motor Vehicle, Motor Bus. Motor Truck, Semi-Trailer, Trailer, and Vehicle are also defined by § 1102, Title 16, Guam Code Annotated.

(e) School means any public or private educational facility, including institutions of higher learning, which shall encompass all instructional, non-instructional, sports and extra curricular buildings and facilities.

§ 37.20. Burglary: Defined, Punishment Classified.

(a) A person is guilty of burglary if he enters or surreptitiously remains in any habitable property, building, or a separately secured or occupied portion thereof, or if he enters or surreptitiously remains in any School as defined in § 37.10(e) of this Chapter, with intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter, or a person is guilty of burglary if he enters or surreptitiously remains in any motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motor bus, motor truck, or vehicle, with intent to commit a crime therein. It is an affirmative defense to prosecution for burglary that the property, or building, or motor vehicle was abandoned <u>or if the person reasonably believed that he or she owned, leased rented or was otherwise licensed to enter and remain in the habitable property, building, or a separately secured or occupied portion thereof, or the School, motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motorbus, motor truck, or vehicle.</u>

(b) Burglary is a felony of the second degree. In the case of burglary 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, the court may sentence the offender to not more than five (5) years imprisonment as a third degree felony conviction, and the provisions of this Subsection prohibiting probation, suspension, parole or work release shall not be applicable to such offender.

(c) A second or subsequent offense of burglary to a school shall be a felony of the first degree. In the case of a second or subsequent conviction of burglary committed to a school as a felony of the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years, and may impose a maximum term of up to twenty (20) 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. However, if the offender is under the age of eighteen years the court shall have the discretion to suspend all or a portion of the minimum sentence, and may encourage the Balanced Approach Restorative Justice Process as provided in 19 GCA § 5134.

§ 37.30. Criminal Trespass: Defined, Punished, Defenses.

(a) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any habitable property or any building or any motor vehicle. An offense under this Subsection is a misdemeanor if it is committed in a dwelling or motor vehicle. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(1) actual communication to the defendant;

(2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) fencing or other enclosure manifestly designed to exclude intruders. An offense under this Subsection constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person or a peace officer. Otherwise it is a violation.

(c) It is an affirmative defense to prosecution under this Section that:

(1) the property or building involved in an offense under Subsection (a) was abandoned;

(2) the premises were at the time open to members of the public and the defendant complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) the defendant reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

~~**§ 37.40. The Breaking of Window Glass to Gain Access to Vehicles.**~~

~~(a) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, is guilty of an additional offense as a third degree felony.~~

~~(b) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or~~

~~criminal trespass, in which the broken glass causes bodily injury to an innocent person is guilty of an additional offense as a second degree felony.~~

ARTICLE 2

HOME INVASION

§ 37.210. Home Invasion.

A person is guilty of home invasion when such person commits a crime of burglary, as defined by this Chapter, in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with the intent to commit a crime therein, and, in the course of committing the offense:

(a) acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a violent crime against the person of another person other than a participant in the crime who is actually present in such dwelling;

(b) such person is armed with explosives or a deadly weapon or dangerous instrument; or

(c) if any of the acts of a participant at any time during the burglary, or while attempting a burglary, or while fleeing from a burglary/attempted burglary, directly or indirectly, cause mental or emotional trauma, bodily injury, serious bodily injury, or the death of an occupant of the dwelling who is not a participant in the burglary.

37.220. In the Course of Committing Home Invasion.

An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense, or flight after the attempt or commission.

§ 37.230. Knowledge of Occupancy is Not a Defense.

It is no defense that the defendant reasonably believed that the dwelling was unoccupied, by a person who was not a participant in the crime, at the time the home invasion occurred.

§ 37.240. Home Invasion Punished.

(a) Home invasion is a first degree felony, and any person found guilty under this Section shall be sentenced to a term of imprisonment of which at least ten years may not be suspended or reduced by the court.

(b) The sentence imposed for home invasion shall run consecutively to any sentence for other crimes committed in conjunction with the home invasion.

ARTICLE 3

CARJACKING

§ 37.310. Carjacking.

A person is guilty of carjacking when such person commits a crime of burglary, as defined by this Chapter, in a vehicle, while a person other than a participant in the crime is actually present in such vehicle, with intent to commit a crime therein, and, in the course of committing the offense:

(a) acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a violent crime against the person of another person other than a participant in the crime who is actually present in such vehicle; or

(b) if any of the acts of a participant at any time during the burglary, or while attempting a burglary or while fleeing from a burglary/attempted burglary, directly or indirectly, cause the mental or emotional trauma, bodily injury, serious bodily injury or the death of an occupant of the vehicle who is not a participant in the burglary.

§ 37.320. Armed Carjacking.

Whoever commits the offense of carjacking while armed with, or having readily available, any pistol, or other firearm or imitation thereof, or other dangerous or deadly weapon, including a firearm, dirk, knife, switchblade, razor, blackjack, billy, or metallic or other false knuckles, or any object capable of inflicting death or serious

bodily injury, shall be guilty of armed carjacking.

§ 37.330. In the Course of Committing Carjacking or Armed Carjacking.

An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.

§ 37.340. Knowledge of Occupancy is Not a Defense.

It is no defense the defendant reasonably believed that the vehicle was unoccupied, by a person who was not a participant in the crime, at the time the carjacking or armed carjacking occurred.

§ 37.350. Carjacking Punished.

(a) Carjacking is a first degree felony and any person found guilty under § 37.310 shall be sentenced to a term of imprisonment of which at least ten (10) years may not be suspended or reduced by the court.

(b) The sentence imposed for carjacking shall run consecutively to any sentence for other crimes committed in conjunction with the carjacking.

§ 37.360. Armed Carjacking Punished.

(a) Armed carjacking is a first degree felony and any person found guilty under § 37.320 shall be sentenced to a term of imprisonment of which at least fifteen (15) years may not be suspended or reduced by the court.

(b) The sentence imposed for armed carjacking shall run consecutively to any sentence for other crimes committed in conjunction with the carjacking.

Section 16. Chapter 40 (Robbery), Title 9, Guam Code Annotated was reviewed and no changes are recommended to this Chapter.

Section 17. Chapter 43, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 43

THEFT AND RELATED OFFENSES

ARTICLE 1

DEFINITIONS

§ 43.10. Definitions.

As used in this Chapter, unless a different meaning plainly is required:

(a) *Deprive* means:

(1) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

(2) to abandon the property under circumstances amounting to a reckless exposure to loss.

(b) *Movable Property* means property the location of which can be changed, including things growing on, or affixed to, or found in land, and documents although the rights represented thereby have no physical location. Immovable Property is all other property.

(c) *Obtain* means:

(1) in relation to property, to bring about a transfer or purported transfer of legal interest in the property, whether to the obtainer or another; or

(2) in relation to labor or service, to secure performance thereof.

(d) *Property* means anything of value, including real estate, tangible and intangible personal property, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, trade secrets, or agricultural product, which includes floriculture, horticulture, viticulture, aquaculture, forestry products and commodities, shrubbery, nuts, coffee, seeds, or other farm or plantation products or commodities grown by or raised by a bona fide farmer as defined by 5 GCA§ 60354(f).

(e) *Property of Another* includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe,

regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(f) *Trade Secret* means the whole or any portion of phase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and is not generally available to the public, and which gives one who uses it an advantage over actual or potential competitors who do not know of or use the trade secret, or the contents of private and unpublished records used in the business of examining, certifying or insuring titles to real property. Proof that the owner takes measures to prevent information from becoming available to persons other than those selected by the owner to have access thereto for limited purposes gives rise to an inference that the information is secret.

§ 43.15. Theft a Single Offense.

Conduct denominated theft in this Chapter constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Chapter, notwithstanding the specification of a different manner in the accusatory pleading, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice of by surprise.

§ 43.20. Theft; Defined & Punishment Classified.

(a) *Theft* constitutes a felony of the second degree if the amount involved <u>is Five Thousand Dollars ($5000.00) or more</u> ~~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 ~~is 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 ~~amount~~ 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.

§ 43.21. Definition of Unauthorized Electrical Connections or Illegal Power Hook-Ups.

An illegal power hook-up is any connection to power lines which belong to the government of Guam, that is made without the prior written permission of the Guam Power Authority, or any power hook-up from a direct power line which bypasses or hinders meter registration. The conditions include, but are not limited to:

(a) External jumpers;

(b) Bypass on meter;

(c) Tap ahead of electric meter;

(d) Inverted (electric) or reversed substitution meter;

(e) Manipulation of meter dials;

(f) Foreign materials inside electric meter;

(g) Open potential line;

(h) Unmetered theft of service;

(i) Metered theft of service; or

(j) Any other unauthorized or illegal hook-up.

§ 43.25. Defenses; Conditions Upon Same.

(a) It is an affirmative defense to prosecution for theft that the defendant:

(1) was unaware that the property or service was that of another; or

(2) acted in good faith under a claim of right to the property or service involved or that he had a claim of right to acquire or dispose of it as he did.

(b) It is no defense that theft was from the defendant's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

§ 43.30. Theft of Property; Defined.

(a) A person is guilty of *theft* if he unlawfully takes or obtains or exercises unlawful control over, movable property of another with intent to deprive him thereof.

(b) A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with intent to deprive him thereof.

§ 43.31. Crime Against the Community; Defined and Punishment.

(a) A person is guilty of a Crime Against the Community if that person knowingly takes, obtains or exercises unlawful control over government-owned, leased or borrowed property, or interferes with, obstructs, or takes action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety; or (2) doing so results in a deprivation of public services, such as

utility services, the education of public or private school students, or any government service intended to benefit the public.~~; or (3) does so for a purpose other than the original purpose for which the property or services were to be provided.~~

(b) A person is guilty of a Crime Against the Community if that person knowingly destroys, defaces, alters, tampers with or damages government-owned, leased or borrowed property.

(c) A Crime Against the Community shall be alleged, in an information, complaint or indictment, as a Special Allegation which enhances punishment when the defendant is convicted of another offense. A Crime Against the Community shall be tried to a jury if the underlying crime is tried to a jury.

(d) A person convicted of a Crime Against the Community shall be sentenced to:

(1) Insofar as is practicable, make restitution to the victim of the crime, including the government of Guam or the Federal government;

(2) Insofar as is practicable, perform community service intended to raise community awareness that a crime against the public interest has been committed and is being punished, including, *but not limited to*, repair, painting and cleaning of items which are stolen, damaged or defaced; or

(3) Serve one (1) year of incarceration and pay an additional fine of up to Five Thousand Dollars ($5,000.00) in addition to the sentence imposed for the underlying crime, if the underlying crime is a misdemeanor or felony. The court may suspend said term of incarceration and impose a term of probation instead.

§ 43.35. Theft by Deception; Defined.

(a) A person is guilty of *theft* if he intentionally obtains property of another by deception. A person deceives if he intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's

intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

(2) prevents another from acquiring information which would affect his judgment of a transaction;

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is not a matter of official record.

(b) The term deceive does not include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive typical members of the group addressed.

§ 43.40. Theft by Threatening; Defined; Defense.

(a) A person is guilty of *theft* if he intentionally obtains property of another by threatening to:

(1) inflict bodily injury on anyone or commit any other criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

(4) take or withhold action as an official, or cause an official to take or withhold action;

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the defendant purports to act;

(6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) do any other act which would not substantially benefit the defendant but which is calculated to harm another person.

(b) It is an affirmative defense to prosecution for extortion by threats to charge any person with a crime that the defendant honestly believed the threatened charge to be true and that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances to which such charge addressed.

§ 43.45. Theft of Property Lost, Mislaid or Delivered by Mistake; Defined.

A person who comes into control of property of another that he knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

§ 43.50. Theft by Receiving Stolen Property; Defined.

(a) A person is guilty of *theft* if he intentionally receives, retains or disposes of movable property of another knowing that it has been stolen or believing that it has probably been stolen. It is a defense to a charge of violating this Section that the defendant received, retained or disposed of the property with intent to restore it to the owner.

(b) Where the defendant is in the business of buying, selling or otherwise dealing in property, proof that he obtained stolen property without having made reasonable inquiry whether the person from whom he obtained it has the legal right to sell or deliver it, and that he obtained it under circumstances which should have caused him to make such inquiry, gives rise to an inference that he obtained it knowing that it has been stolen or believing that it has been probably been stolen.

(c) Any person or corporation which is in the business of buying or selling gold, diamonds, coins, silver, or gems or jewelry shall retain for a minimum of one (1) year after the last entry a log book of all purchases made from on-island sources, indicating the nature of the items bought, the name and address of the seller, the price paid, and the date of purchase. In addition, in the case of items purchased from a person not in the business of selling gold, coins, diamonds, gems, silver, or jewelry, the purchaser shall either take a picture of the seller, or shall obtain identification from the seller containing a picture. The above records shall be made available to law enforcement officers upon request.

(d) Any person or corporation which is in the business of buying or selling gold, diamonds, coins, silver, or gems or jewelry shall retain all items purchased on Guam from persons not business licensed for the purpose of buying or selling gold, diamonds, coins, silver, gems or jewelry for a period of seven (7) days before selling, melting, destroying, or otherwise disposing of such items purchased on Guam.

(e) It shall be unlawful for any person to knowingly purchase gold, diamonds, jewelry, silver, gems or coins from any person under the age of eighteen (18) years, provided that nothing herein shall be construed as prohibiting the parent or guardian of a minor child from selling gold, diamonds, jewelry, coins or gems belonging to a minor child, on behalf of said child.

(f) Any person, corporation or entity who, as a substantial part of a business, buys and sells used items, including copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans and including any contractor who buys copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, in the course of conducting his or her business, shall retain, for a minimum of one (1) year form authorized by the Chief of Police of all purchases of copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans from on-

island sources, indicating the nature and a reasonable estimate of the size, shape, weight, and length of the items bought, the name, signature and address of the seller, the price paid, and the date of purchase, telephone number, and shall obtain and maintain a copy of each seller's identification documents, including, but not limited to, a government driver's license, government identification card or passport, and a copy of the registration certificate of the vehicles used to transport the copper wire, bronze, brass, aluminum and other non ferrous metals but shall not include recyclable aluminum cans, the name of the employee representing the scrap metal business in the transaction. The above records shall be made available to law enforcement officers upon request. Copies of all completed forms or paper of information required by this Section, immediately upon purchase of the copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, shall be immediately transmitted via email or by facsimile transmittal to the Guam Police Department.

(g) Any person, corporation or entity who, as a substantial part of a business, buys and sells used items, including copper wire, bronze, brass, aluminum and other non ferrous metals but shall not include recyclable aluminum cans, and including any contractor who buys copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, in the course of conducting his or her business, who purchases said items from persons who do not have a business license for buying or selling copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, shall keep such items for a period of seven (7) days before altering, selling, melting, destroying, or otherwise disposing of said items purchased on Guam.

(h) Any knowing violation of Subsections (c), (d) or (e) of § 43.50 of Chapter 43 of Title 9 GCA shall be a misdemeanor upon the first conviction of any such violation, and shall be a felony of the third degree for any subsequent offense. Any

violation of Subsections (f) or (g) shall be a felony of the third degree. A third conviction of any such violation shall require revocation of the offender's business license.

(i) Any violation of subsections (f) or (g), *shall* be punishable by a term of one (1) to five (5) years in prison, a fine of Ten Thousand Dollars ($10,000) to Twenty-five Thousand Dollars ($25,000) and restitution per incident. The amount of restitution *shall* include the replacement cost of the item, the cost of repairs for damages caused by the theft and the cost associated with the loss of use of the item.

§ 43.51. Theft of Utilities.

(a) A person is guilty of *theft* if he knowingly tampers with, alters or by-passes meters for the purpose of obtaining electrical power, gas or water without paying compensation to the entity providing such services. A person commits theft if he knowingly diverts telephone service, electrical power, gas or water to his own benefit or to the benefit of another not entitled thereto with the intent to avoid payment to the entity providing such service.

(b) Unauthorized Electrical Connections; Bypass or Obstruction of Meter. Every user, contractor or business who shall unlawfully and knowingly injure, alter, or procure to be injured, make or cause to be made any connection in any manner whatsoever with any electric wire or electric appliance of any character whatsoever operated by any user, users, corporations or government entities authorized to generate, transmit and sell electric current, or who shall so willfully and knowingly with intent to injure or defraud, use or cause to be used any such connection in such manner as to supply any electric current for heat or light or power to any electric lamp, apparatus or device, by, or at which electric current is consumed or otherwise used or wasted, without passing through a meter for the measuring and registering of the quantity passing through such electric wire or apparatus, or who shall, knowingly or with like intent injure, alter or procure to be injured or altered any

electric meter, or obstruct its working, or procure the same to be tampered with or injured, or use or cause to be used any electric meter, or appliance so tampered with or injured, shall be deemed guilty of a theft constituting a felony in the third degree, and shall be subject to any and all fines, penalties and terms of imprisonment applicable by law, as well as any and all fines payable to the Guam Power Authority.

§ 43.55. Theft of Services; Defined.

(a) A person is guilty of *theft* if he intentionally obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. Services include labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for services is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to an inference that the service was obtained by deception as to intention to pay.

(b) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

§ 43.56. Unauthorized Reception of Cable Service.

(a) Unauthorized Interception or Receipt or Assistance in Intercepting or Receiving Service; Definition of Assist in Intercepting or Receiving.'

(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this Section, the term assist in intercepting or receiving' shall include the manufacture or distribution of equipment intended

by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of Subparagraph (1).

(b) Penalties for Willful Violation.

(1) Any person who willfully violates Subsection (a)(1) shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisoned for not more than one (1) year, or both, for the first such offense and shall be guilty of a felony of the third degree and shall be punished by a fine of not more than Three Hundred Dollars ($300.00) or imprisoned for not more than three (3) years, or both, for any subsequent offense.

(2) Any person who violates Subsection (a)(1) willfully and for purposes of commercial advantage or private financial gain shall be guilty of a felony of the third degree and shall be punished by a fine of not more than Three Thousand Dollars ($3,000.00) or imprisoned for not more than three (3) years, or both, for the first such offense and shall be guilty of a felony of the second degree and shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or imprisoned for not more than five (5) years, or both, for any subsequent offense.

(3) For purposes of all penalties and remedies established for violations of Subsection (a)(1), the prohibited activity established herein, as it applies to each such device, shall be deemed a separate violation.

§ 43.60. Theft of Property Held in Trust; Defined.

A person who in the course of business obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property as his own and fails to make the required disposition. The foregoing applies

notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

§ 43.65. Unauthorized Use of Vehicle: Defined; Punished; Defense.

(a) A person commits a misdemeanor if he operates an automobile, aircraft, motorcycle, motorboat or other motor-propelled vehicle or vessel, or sailboat, without consent of the owner or other person authorized to give consent.

(b) It is an affirmative defense to prosecution under this Section that the defendant reasonably believed that the owner or other person authorized to give consent would have consented to the operation had he known of it.

§ 43.70. Reimbursement to Owner of Stolen Livestock or Agricultural Products.

In any case where there is a conviction under the provisions of Chapter 43 of this Code and the property stolen by the defendant was livestock or agricultural product, as that term is used in § 43.10(d) of this Article, in addition to a fine or imprisonment imposed, the court shall direct that the defendant pay to the owner of the stolen livestock its fair market value, or to the owner of the stolen agricultural product the production costs and fair market value as determined by the court upon consultation with the Department of Agriculture. Failure to make such payments shall be deemed a failure to pay a fine and punished accordingly, which may include, but shall not be limited to, the confiscation of a defendant’s personal property such as the vehicle, or vehicles, or any equipment used in the theft. If a defendant is found unable to pay due to financial hardship, the court may require, but not be limited to: the auctioning of all personal property confiscated in accordance with this Section, or the performing of Alternative Community Service hours credited against the fine, or reimbursement imposed, or both, pursuant to Article 6 of Chapter 80, Title 9, Guam Code Annotated.

§ 43.75. Theft of Dog or Cat, When a Felony of the Second Degree.

It shall be theft punishable as a felony of the second degree, for any person:

(a) To steal any dog or cat for the purpose of or with the intent of holding the same for ransom or a reward for the return thereof; or

(b) To demand payment of a reward, ransom, or any thing of value for the return to the rightful owner of any dog or cat which is stolen, lost or strayed; or

(c) To refuse to return of a dog or a cat which is stolen, lost or strayed to the rightful owner except upon payment of a reward or ransom; or

(d) To steal any dog or cat for the purposes of killing or maiming the same; or

(e) To steal any dog for purpose of, or with intent of using the dog for any dog fight or fight with any other animals which could result in injury to the dog.

ARTICLE 2

RETAIL THEFT

§ 43.80. General Definitions.

For the purposes of this Article, the words and phrases defined in §§ 43.82 through 43.92 have the meanings ascribed to them in those sections unless a contrary meaning is clear from the context.

§ 43.81. Conceal Defined.

To *conceal* merchandise means that although there may be some notice of its presence, that merchandise is not visible through ordinary observation.

§ 43.82. Full Retail Value Defined.

Full Retail Value means the merchant's stated or advertised price of the merchandise.

§ 43.83. Merchandise Defined.

Merchandise means any item of tangible personal property.

§ 43.84. Merchant Defined.

Merchant means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchise or independent contractor of such owner or operator.

§ 43.85. Minor Defined.

Minor means a person who is less than eighteen (18) years of age, is unemancipated and resides with his parents or legal guardian.

§ 43.86. Person Defined.

Person means any natural person or individual.

§ 43.87. Peace Officer Defined.

Peace Officer has the meaning ascribed to that term in § 5.55 of the Criminal Procedure Code.

§ 43.88. Premises of a Retail Mercantile Establishment Defined.

Premises of a Retail Mercantile Establishment includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

§ 43.89. Shopping Cart Defined.

Shopping Cart means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

§ 43.90. Under-Ring Defined.

Under-Ring means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

§ 43.91. Retail Theft; Defined.

A person is guilty of *theft* if he knowingly:

(a) takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise;

(b) alters, transfers or removes any label, price tag, marking, indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of depriving the merchant of the full retail value of such value of merchandise;

(c) transfers any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise;

(d) under-rings with the intention of depriving the merchant of the full retail value of the merchandise; or

(e) removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal.

§ 43.92. Presumptions.

If any person:

(a) conceals upon his person or among his belongings, unpurchased merchandise displayed, held, stored or offered for sale in a retail mercantile establishment; and

(b) removes that merchandise beyond the last station for receiving payments for that merchandise in that retail mercantile establishment, such person shall be

presumed to have possessed, carried away or transferred such merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

§ 43.93. Detention.

Any merchant who has reasonable grounds to believe that a person has committed retail theft may detain such person, on the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) to request identification;

(b) to verify such identification;

(c) to make reasonable oral inquiry as to whether such person has in his possession unpurchased merchandise and, to make reasonable investigation of the ownership of such merchandise;

(d) to inform a peace officer of the detention of the person and surrender custody of that person to a peace officer; or

(e) in the case of a minor, to immediately inform a peace officer and the parents or guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of such minor to such person.

§ 43.94. Affirmative Defense.

A detention, as permitted in this Article, does not constitute an arrest or unlawful restraint, as defined in § 22.35 of this Code, nor shall it render the merchant liable to the person so detained unless said detention is done unreasonably or without proper cause or justification.

§ 43.94.1. Severability.

If any part of this Article is declared invalid by a court, then the remainder of this Article shall still be in effect.

§ 43.95. Unlawful Use of Theft Detection Shielding *or* Deactivation Devices.

This Section defines and penalizes the distribution *or* possession of a detection shielding device *or* any tool *or* device designed to remove a theft detection device from merchandise prior to purchase for the intent to commit (*or* aid *or* abet) theft. A person who activates an anti-shoplifting device may be lawfully detained in a reasonable manner for a reasonable period of time.

(a) A person is guilty of unlawful distribution of a theft detection shielding device when he knowingly manufactures, sells, offers for sale *or* distributes in any way any laminated *or* coated bag intended to shield merchandise from detection by an electronic *or* magnetic theft detector.

(b) A person is guilty of unlawful possession of a theft detection shielding device when he knowingly possesses any laminated *or* coated bag *or* device intended to shield merchandise from detection by an electronic *or* magnetic theft detector, with the intent to commit (*or* aid *or* abet) theft.

(c) A person is guilty of unlawful possession of a theft detection device deactivator *or* remover when he knowingly possesses any tool *or* device designed to allow *or* capable of allowing the deactivation *or* removal from any merchandise of any theft detection device with the intent to use such tool *or* device to deactivate any theft detection device on, *or* to remove any theft detection device from, any merchandise without the permission of the merchant *or* person owning *or* lawfully holding said merchandise.

(d) A person is guilty of unlawful distribution of a theft detection device deactivator *or* remover when he knowingly manufacturers, sells, offers for sale *or* distributes in any way any tool *or* device designed to allow, *or* capable of allowing the deactivation *or* removal from any merchandise of any theft detection device without the permission of the merchant *or* person owning *or* lawfully holding said merchandise.

(e) A person is guilty of unlawful deactivation *or* removal of a theft detection device when he intentionally deactivates in a retail establishment a theft detection device on, *or* removes a theft detection device from, merchandise prior to purchase.

(f) Any person convicted for violating the provisions of Subsections (a), (b), (c), (d) *or* (e) of this Section where the value of the merchandise is *less than* Five Hundred Dollars ($500) is guilty of a petty misdemeanor. Any person convicted for violating the provisions of Subsections (a), (b), (c), (d) *or* (e) of this Section where the value of the merchandise is *more than* Five Hundred Dollars ($500) is guilty of a misdemeanor.

(g) The activation of an anti-shoplifting *or* inventory control device as a result of a person exiting the establishment *or* a protected security device within the area within the establishment *shall* constitute reasonable cause for the detention of the person so exiting by the owner *or* operator of the establishment *or* by an agent *or* employee of the owner *or* operator, provided notice has been posted to advise the patrons that the establishment utilizes anti-shoplifting *or* inventory control devices. Each such detention *shall* be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device *or* for the recovery of goods.

(h) Such taking into custody and detention by a law enforcement officer, security officer, merchant, merchant's employee *or* agent, if done in compliance with all the requirements of the foregoing Subsection, *shall* not render such law enforcement officer, security officer, merchant, merchant's employee *or* agent, criminally *or* civilly liable, including any liability for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress *or* defamation.

ARTICLE 3

ANTI-SKIMMING ACT

§ 43.96. Purpose.

This Article criminalizes the use of a scanning device *or* re-encoder to capture encoded information from a magnetic strip from a credit, debit, *or* other payment card and then places it on a different credit, debit, *or* other payment card with the intent to defraud.

§ 43.97. Short Title.

This Article *shall* be cited as the "Anti-Skimming Act."

§ 43.98. Definitions.

As used in this Article:

(a) *Scanning device* means a scanner, reader *or* any other electronic device that is used to access, read, scan, obtain, memorize *or* store, temporarily *or* permanently, information encoded on the magnetic strip *or* stripe of a payment card.

(b) *Re-encoder* means an electronic device that places encoded information from the magnetic strip *or* stripe of a payment card onto the magnetic strip *or* stripe of a different payment card.

(c) *Payment card* means a credit card, charge card, debit card, hotel key card, stored value card *or* any other card that is issued to an authorized card user and that allows the user to obtain, purchase *or* receive goods, services, money *or* anything else of value from a merchant.

(d) *Merchant* is defined as an owner *or* operator of any retail mercantile establishment, *or* any agent, employee, lessee, consignee, officer, director, franchisee *or* independent contractor of such owner *or* operator. A *merchant* means a person who receives from an authorized user of a payment card *or* someone the person believes to be an authorized user, a payment card *or*

information from a payment card *or* what the person believes to be a payment card *or* information from a payment card as the instrument for obtaining, purchasing *or* receiving goods, services, money *or* anything else of value from the person.

(e) *Authorized card user* means any person with the empowerment, permission *or* competence to act in the usage of any payment card to include, but *not be limited to*, a credit card, debit card, hotel key card, stored value card *or* any other card that allows the user to obtain, purchase *or* receive goods, services, money *or* anything else of value from a merchant.

§ 43.99. Penalties.

(a) It is a felony of the third degree felony for a person to use:

(1) A scanning device to access, read, obtain, memorize *or* store, temporarily or permanently, information encoded on the magnetic strip *or* stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card *or* a merchant.

(2) A re-encoder to place information encoded on the magnetic strip *or* stripe of a payment card onto the magnetic strip *or* stripe of a different card without the permission of the authorized user of the card from which the information is being re-encoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card *or* a merchant.

(b) Any person who violates subparagraph (a)(1) *or* (2) a second *or* subsequent time commits a second degree felony.

Section 18. Chapter 46, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 46

FORGERY, FRAUDULENT PRACTICES AND TELEPHONE RECORDS

ARTICLE 1

FORGERY AND FRAUDULENT PRACTICES

§ 46.10. Forgery; Defined and Punished.

(a) A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he:

(1) falsely makes a written instrument by drawing a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

(2) falsely completes a written instrument by transforming through adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(3) falsely alters a written instrument by change, without authorization by anyone entitled to grant it, of a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(4) induces another by deception to sign or execute a written instrument which is not what it has been represented to be; or

(5) utters any written instrument which he knows to be forged in a manner specified in Paragraphs (1), (2), (3) or (4).

(b) Written Instrument includes printing or any other method of recording information, money, coins, tokens, tickets, stamps, seals, credit cards, badges, trademarks and other symbols of value, right, privilege or identification.

(c) Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental agency, or part of an issue of stock, bonds or other instruments representing interests or claims against a corporate or other organization or its property. Forgery is a felony of the third degree if the writing is or purports to be a will, deed, contract, release, commercial instrument or other document evidencing, creating, transferring, altering, terminating or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

§ 46.15. Criminal Simulation; Defined and Punished.

A person commits a misdemeanor if, with intent to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess.

§ 46.20. Tampering with Recordable Documents; Defined and Punished.

A person commits a felony of the third degree if, with intent to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

§ 46.25. Tampering with Records to Deceive or Conceal; Defined and Punished.

A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with intent to deceive or injure anyone or to conceal any wrongdoing.

§ 46.30. Issuance of Dishonored Checks.

(a) Definitions. For the purpose of this section, the following terms have the meanings given them.

(1) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(2) "Credit" means an arrangement or understanding with the drawee for the payment of a check.

(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) ~~$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 equal to or more than $2,500.00 but less than $10,000.00. ~~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.

(2) In a prosecution under this paragraph, the value of dishonored checks issued by the defendant in violation of this subsection within any six-month period may be aggregated and the defendant charged accordingly in applying this section.

(c) Proof of intent. Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

(1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

(2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection; or

(3) proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection.

Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within thirty (30) days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section. An affidavit of service by mailing shall be retained by the payee or holder of the check.

(d) Proof of lack of funds or credit. If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

(e) Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

§ 46.35. Fraudulent Use of Credit Cards; Defined and Punished.

(a) A person commits an offense if he uses a credit card or the account number of a credit card account with the intent of obtaining property or services with knowledge that:

(1) the card or account number is stolen or forged;

(2) the card or account number has been revoked or cancelled; or

(3) for any other reason his use of the card is unauthorized.

(b) It is an affirmative defense to prosecution under Paragraph (3) of Subsection (a) if the defendant proves by a preponderance of the evidence that he had the ability and intended to meet all obligations to the issuer arising out of his use of the card.

(c) Credit card means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(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~~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).

§ 46.40. Deceptive Business Practices; Defined and Punished.

(a) A person commits a misdemeanor if in this course of business he:

(1) uses or possesses for a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

(3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) sells, offers or exposes for sale adulterated or mislabeled commodities. "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulation, or, if none, as set by established commercial usage. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulations or, if none, as set by established commercial usage;

(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof with the intent of promoting the purchase or sale of property or services;

(6) makes a false or misleading written statement with the intent of obtaining property or credit; or

(7) makes a false or misleading written statement with the intent of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(b) It is an affirmative defense to prosecution under Subsection (a) if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

§ 46.45. Bribery for Violation of Duty; Defined and Punished.

(a) A person commits a misdemeanor if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty or fidelity to which he is subject as:

(1) agent or employee of another;

(2) trustee, guardian, or other fiduciary;

(3) lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(4) officer, director, partner, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(5) arbitrator or other purportedly disinterested adjudicator or referee.

(b) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

(c) A person commits a misdemeanor if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this Section.

~~**§ 46.50. Rigging of Public Exhibitions; Defined; Failure to Report; Soliciting Punishment.**~~

~~(a) A person commits a misdemeanor if, with intent to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:~~

~~(1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or~~

~~(2) tampers with any person, animal or thing.~~

~~(b) A person commits a misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under Subsection (a).~~

~~A person commits a petty misdemeanor if he fails to report, with reasonable promptness, a solicitation to accept any benefit or to do any tampering, the giving or doing of which would be criminal under Subsection (a).~~

§ 46.55. Defrauding Creditors; Defined and Punished.

(a) A person commits an offense, he:

(1) destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent to defeat enforcement of that security interest;

(2) sells, assigns, exchanges, secretes, injures, destroys or otherwise disposes of any property upon which he has previously executed a mortgage or any instrument that operates as such, with intent to defraud the mortgages or a purchaser thereof;

(3) secretes, removes, assigns, conveys or otherwise disposes of his property with intent to defraud a judgment creditor or to prevent that property from being made liable for the payment of his debts;

(4) with intent to defraud, buys, receives, conceals or aids in concealing personal property, knowing it or any interest therein to be hired, leased or held as collateral security; or

(5) Intentionally sells, mortgages, conveys, conceals or aids in concealing personal property received by him upon a written conditional sale or lease agreement, or any other written agreement by which it or any interest therein is held as collateral security, before performance of any conditions precedent to acquiring the title thereto (A) without the consent in writing of the conditional seller, lessor or other holder of the security interest or (B) without disclosure to any buyer or transferee of the existence and terms of the conditional sale, lease or security agreement.

(b) An offense under this Section is a felony of the third degree if the value of the property which is the subject of the offense exceeds Ten Thousand Dollars in value. Otherwise the offense is a misdemeanor.

§ 46.60. Fraud in Insolvency; Defined and Punished.

(a) A person commits a misdemeanor, if, with intent to defraud a creditor and with knowledge either that proceedings have been or are about to be instituted for the appointment of an administrator or that a composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he:

(1) conveys, transfers, removes, conceals, destroys encumbers or otherwise disposes of any part of or any interest in the debtor's estate;

(2) obtains any substantial part of or interest in the debtor's estate;

(3) presents to any creditor or to the administrator any writing or record relating to the debtor's estate or to a creditor's claim, knowing the writing or record to contain a false material statement;

(4) fails or refuses to disclose any information that he is required by law to furnish to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate; or

(5) misrepresents any information furnished to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate.

(b) As used in this Section, “administrator” means an assignee or trustee for the benefit of creditors, a conservator, a receiver or any other person entitled to administer property for the benefit of creditors.

§ 46.65. Receiving Deposits in Failing Bank; Defined and Punished.

(a) As used in this Section, financial institution means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(b) An officer, manager or other person directing or participating in the direction of a financial institution commits a misdemeanor if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:

(1) due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and

(2) the person making the deposit or other payment is unaware of the precarious situation of the institution.

§ 46.70. Misapplication of Entrusted Funds; Defined and Punished.

(a) A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

(b) The offense is a misdemeanor if the amount involved exceeds $50; otherwise it is a petty misdemeanor.

(c) Fiduciary includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(d) Financial institution has the meaning provided in Subsection (a) of § 46.65.

§ 46.75. Procuring Execution of Financially Significant Instruments by Fraud, Defined and Punished.

A person commits a misdemeanor or if by deception he causes another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

§ 46.80. Impersonation; Identity Theft; Defined and Punished.

(a) A person commits an offense when that person:

(1) impersonates another or assumes a false identity and does an act in such assumed character or false identity to obtain a benefit for oneself or another, or to injure or defraud another;

(2) pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit for oneself or for another, or to injure or defraud another;

(3) impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;

(4) possesses or obtains any personal identifying information pertaining to another person, without the authorization of that person, and uses or attempts to use that information, or assists another person in using the information, for any unlawful purpose, including to:

(A) fraudulently obtain, or attempt to obtain, money, credit, goods, services, anything of value, or medical information in the name of another person;

(B) injure or defraud, or attempt to injure or defraud, another person;

(C) avoid, or attempt to avoid, the payment of debt or other legal obligation; *or*

(D) avoid, or attempt to avoid, prosecution for a crime in the name of the other person without the consent of that person.

(b) As used in this Section, *personal identifying information* means the name, address, telephone number, driver's license or driver's license number, social security card or social security number, passport or passport number, official government of Guam or other state identification card or number, mother's maiden name, demand deposit account number, savings account number, credit card or credit card number, or a debit card or debit card number, or any name or number that may be used, alone or in conjunction with any other information, to assume the identity of a person. The list in this Subsection is *not* exhaustive.

(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 ~~at least~~

~~Five Thousand Dollars ($5,000.00); otherwise, it is a felony of the third degree~~ equal to or greater than Ten Thousand Dollars ($10,000.00).

(d) A person found guilty of violating any provisions of this Section shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of such violation. Financial loss may include any costs incurred by such victim in correcting the credit history of such victim, or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.

(e) In any case in which a person obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of Subsection (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did *not* commit the crime.

§ 46.85. Tampering with Vehicle Identification Number or Other Vehicle Identifiers.

A person commits a felony if he or she knowingly destroys, removes or conceals, or attempts to destroy, remove or conceal, any Vehicle Identification Number (VIN) or other vehicle identifiers with intent to deceive or injure anyone or to conceal any wrongdoing including littering violations.

ARTICLE 2

TELEPHONE RECORDS; OBTAINING, SELLING, OR RECEIVING WITHOUT CONSENT

§ 46.90. Definitions.

As used in this Section:

(a) Caller Identification Record means a record that is delivered electronically to the recipient of a telephone call simultaneously with the reception of the telephone call and that indicates the telephone number from

which the telephone call was initiated *or* similar information regarding the telephone call.

(b) Customer means a person who subscribes to telephone service.

(c) Telephone Record means a record in written, electronic or oral form, except a caller identification record and subscriber list information that is created by a telephone service provider and that contains any of the following information with respect to a customer:

(1) Telephone numbers that have been dialed by the customer.

(2) Telephone numbers pertaining to calls made to the customer.

(3) The time when calls were made by the customer *or* to the customer.

(4) The duration of calls made by the customer *or* to the customer.

(5) The location(s) from which calls were initiated by the customer *or* received from the customer.

(d) Telephone Service means the conveyance of two (2)-way voice communication in analog, digital *or* other form by any medium, including wire, cable, fiber optics, cellular, broadband personal communications services *or* other wireless technologies, satellite, microwave *or* at any frequency over any part of the electromagnetic spectrum. Telephone service includes the conveyance of voice communication over the Internet and telephone relay service.

(e) Telephone Service Provider means a person who provides telephone service to a customer.

§ 46.91. Prohibition on Use of Telephone Records.

No person may do any of the following:

(a) Obtain, attempt to obtain or conspire with another to obtain a telephone record that pertains to a customer who is a resident of Guam, without the customer's consent by doing any of the following:

(1) Making a false *or* deceptive statement to an employee, representative or agent of a telephone service provider.

(2) Making a false or deceptive statement to a customer of a telephone service provider.

(3) Accessing such customer's telephone record via the Internet.

(4) Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost or stolen or that has been obtained by fraud *or* contains a false, fictitious or fraudulent statement *or* representation.

(b) Ask another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner prohibited under this Section.

(c) Sell or offer to sell a telephone record obtained in a manner prohibited under this Section.

§ 46.92. Penalties:

(a) A person who violates this Section is guilty of a third degree felony, a fine not to exceed Ten Thousand Dollars ($10,000) or imprisonment not to exceed three (3) years or both, if the violation involves one (1) telephone record.

(b) A person who violates this Section is guilty of a second degree felony, a fine not to exceed Twenty-five Thousand Dollars ($25,000) or imprisonment not to exceed ten (10) years or both, if the violation involves two (2) or more telephone records.

(c) A person who violates this Section is guilty of a third degree felony, a fine not to exceed Fifty Thousand Dollars ($50,000) or imprisonment not to exceed fifteen (15) years or both, if the violation involves more than ten (10) telephone records.

§ 46.93. Additional Penalties.

(a) In addition to the penalties authorized under § 46.92, a person who violates this Section may be required to forfeit personal property used or intended to be used in the violation.

(b) In an action to enforce this Section, the court shall award to a person who is the subject of a telephone record involved in a violation of this Section all of the following:

(1) The amount of the person's pecuniary loss suffered because of a violation of this Section, *if* proof of the loss is submitted to the satisfaction of the court or One Thousand Dollars ($1,000), whichever is greater.

(2) The amount of any gain to the violator as a result of the violation.

§ 46.94. Exceptions.

This Section does not apply to any of the following:

(a) Action by a law enforcement agency in connection with the official duties of the law enforcement agency.

(b) A disclosure by a telephone service provider, if any, of the following applies:

(1) The telephone service provider reasonably believes the disclosure is necessary to do any of the following:

(A) Provide telephone service to a customer.

(B) Protect an individual or the telephone service provider from fraudulent, abusive or unlawful use of telephone service or a telephone record.

(2) The disclosure is made to the National Center for Missing and Exploited Children.

(3) The disclosure is authorized by Guam or federal law or regulation.

(4) The disclosure is related to testing the security procedures or systems of the telephone service provider for maintaining the confidentiality of customer information.

(5) The disclosure is to a government entity, if the telephone company provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information.

(6) The disclosure is in connection with the sale or transfer of all or part of its business or the purchase or acquisition of a portion or all of a business or the migration of a customer from one (1) carrier to another.

(c) A disclosure pursuant to § 46.94 (b), if such disclosure is made reasonably and in good faith, notwithstanding any later determination that such action was not in fact authorized.

ARTICLE 3

MORTGAGE FRAUD

§ 46.100. Title.

This Act may be cited as the Mortgage Fraud Act.

§ 46.101. Definitions.

As used in this Act:

(a) Mortgage lending process means the process through which a person seeks or obtains a mortgage loan, including solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(b) Mortgage loan:

(1) means a loan or agreement made to extend credit to a person when the loan is secured by a deed, security deed, mortgage, security interest, deed

of trust, or other document representing a security interest or lien upon any interest in one (1)-to-four (4) family residential property;

(2) includes the renewal or refinancing of any loan; and

(3) includes home equity loans.

(c) Unlawful activity means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony

(d) Pattern of unlawful activity means engaging in conduct which constitute the commission of at least three (3) episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five (5) years of the commission of the next preceding act alleged as part of the pattern.

(e) Sensitive personal identifying information means any of the following information regarding an individual's:

(1) Social Security number;

(2) driver license number or other government issued identification number;

(3) financial account number or credit or debit card number;

(4) password or personal identification number or other identification required to gain access to a financial account or a secure website;

(5) automated or electronic signature;

(6) unique biometric data; and

(7) any other information that can be used to gain access to an individual's financial accounts or to obtain goods or services.

(f) Value means the value of the property, money, or thing obtained or sought to be obtained.

(g) Person includes any individual or entity capable of holding a legal or beneficial interest in property, including governmental entities.

(h) Obtain means to come into possession of, get, acquire or procure.

§ 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 Section 46.102(a) is guilty of a second degree felony.

§ 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) 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.

~~§ 46.104. Mortgage Fraud Prosecutor and Investigators.~~

~~(a) The Attorney General may employ:~~

~~(1) An attorney licensed to practice law who:~~

~~(A) has knowledge of the law related to mortgage fraud; and~~

~~(B) *if* possible, has a background *or* expertise in investigating and prosecuting mortgage fraud.~~

~~(2) At least two (2) investigators who have a background *or* expertise in investigating mortgage fraud.~~

~~(3) The attorney employed under Subsection (a) (1) has as that attorney's primary responsibility the prosecution of mortgage fraud.~~

~~(4) Each person employed under Subsection (b) *shall* have as that person's primary responsibility the investigation of mortgage fraud.~~

~~(5) clerks, interns, *or* other personnel to assist the attorney employed under Subsection (a) (1).~~

ARTICLE 4

ANTI-PHISHING ACT

§ 46.401. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that phishing or pharming are acts that defraud someone by using a false website, or pretending to be a legitimate business on the web, and fraudulently obtaining identifying information. This Act enables lawsuits by internet service providers and owners of webpages or trademarks that are used without authorization in the conduct of a violation. It is the intent of I Liheslatura to ensure that phishing and pharming are illegal and that Guam has the ability to prosecute the bad actors that prey on the residents of Guam.

§ 46.402. Definitions.

As used in this Act:

(a) entity includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, or instrumentalities, or any other legal entity, whether for profit or not-for-profit;

(b) individual means a natural person;

(c) identifying information means any information that can be used to access an individual's financial accounts or to obtain goods and services, including, but not limited to, address, birth date, social security number, driver's license number, non-driver governmental identification number, telephone number, bank account number, student identification, credit or debit card number, personal identification number, unique biometric data, employee or payroll number, automated or electronic signature, computer image, photograph, screen name or password. The term does not include information that is lawfully obtained from publicly available information, or from federal or local government records lawfully made available to the general public;

(d) false pretenses means the representation of a fact or circumstance which is not true and is calculated to mislead;

(e) webpage means a location that has a single uniform resource locator (URL) with respect to the world wide web, or another location that can be accessed on the internet.

§ 46.403. Phishing and Pharming.

(a) Phishing. For the purposes of this Article 4, an individual or entity is guilty of phishing if, with intent to defraud or injure an individual, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone:

(1) the actor makes any communication under false pretenses purporting to be by or on behalf of a legitimate business, without the authority or approval of the business; and

(2) the actor uses that communication to induce, request, or solicit any person to provide identifying information or property.

(b) Pharming. For the purposes of this Article 4, an individual or entity is guilty of pharming if, with intent to defraud or injure an individual, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone:

(1) creates or operates a webpage that represents itself as belonging to or being associated with a legitimate business, without the authority or approval of such business, and that may induce any user of the internet to provide identifying information or property; or

(2) alters a setting on a user's computer or similar device or software program through which the user may search the internet and thereby causes any user of the internet to view a communication that represents itself as belonging to or being associated with a legitimate business, which message has been created or is operated without the authority or approval of such legitimate business and induces, requests or solicits any user of the internet to provide identifying information or property.

§ 46.404. Immunity for Disabling Phishing and Pharming Sites.

No internet registrar or internet service provider may be held liable under any provision of the laws of Guam for removing or disabling access to an internet domain name controlled or operated by such registrar or by such provider, or to content that resides on an internet website or other online location controlled or operated by such provider, and that such provider believes in good faith is used to engage in a violation of this Act.

§ 46.405. Violations.

(a) A person who violates this Act is guilty of a third degree felony, and is subject to a fine not to exceed Five Thousand Dollars ($5,000), or imprisonment not to exceed five (5) years, or both.

(b) The following persons may bring a civil action against a person who violates this Act:

(1) an internet service provider who is adversely affected by the violation;

(2) an owner of a webpage, computer server, or a trademark that is used without authorization in the violation; or

(3) the Attorney General.

(c) Except as provided by paragraph 3, a person permitted to bring a civil action may obtain either actual damages for a violation of this Act, or a civil penalty not to exceed One Hundred Fifty Thousand Dollars ($150,000) per violation of this Act.

§ 46.406. Applicability.

This Act shall apply to the discovery of a phishing or pharming incident that occurs on or after the effective date of this Act. This Act does not apply to a telecommunications provider's or internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

§ 46.407. 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.

§ 46.408. Effective Date.

This Act shall take effect one hundred twenty (120) days after the date of enactment.

ARTICLE 5

COMPUTER PROTECTION ACT

§ 46.501. Legislative Intent.

It is the intent of I Liheslaturan Guåhan to prohibit a person from using specified protected computers to relay or retransmit commercial electronic mail messages with the intent to deceive or mislead recipients, or an electronic mail service provider under specified circumstances; to prohibit a person from materially falsifying header information in commercial electronic mail messages under specified circumstances;

to prohibit a person from registering for electronic mail accounts or domain names under specified circumstances; and to provide for specified penalties and fines.

§ 46.502. Definitions.

In this Act, the following words have the meanings indicated:

(a) commercial electronic mail message means an electronic message sent primarily for the purpose of commercial advertisement or promotion of:

(1) a commercial product;

(2) a commercial service;

(3) the content on an Internet website; or

(4) a website operated for a commercial purpose;

(b) domain name means any alphanumeric designation that is registered with or assigned by a domain name registrar, domain name registry, or other domain name registration authority as part of an electronic mail address on the internet;

(c) electronic mail service provider means any person, including an internet service provider, that is an intermediary in sending and receiving electronic mail, and that provides to the public the ability to send or receive electronic mail to or from an electronic mail account or online user account;

(d) financial institution means any financial institution of the type supervised under 11GCA, whether or not locally-chartered;

(e) header information means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mails, and any other information that appears in the line identifying or purporting to identify a person initiating the message, and technical information that authenticates the sender of an electronic mail message for network security or network management purposes;

(f) the term initiate, when used with respect to a commercial electronic mail message, means to originate or transmit the message or to procure the origination

or transmission of the message, and does not include actions that constitute routine conveyances of such message;

(g) internet means the international computer network of both federal and nonfederal interoperable packet switched data networks;

(h) internet protocol address means the string of numbers by which a location on the internet is identified by routers or other computers connected to the internet;

(i) materially falsified means altered or concealed in a manner that would impair the ability of one of the following to identify, locate, or respond to a person who initiated an electronic mail message or to investigate an alleged violation of this Act:

(1) a recipient of the message;

(2) an internet access service processing the message on behalf of a recipient;

(3) a person alleging a violation of this Act; or

(4) a law enforcement agency;

(j) multiple means:

(1) more than ten (10) commercial electronic mail messages during a twenty-four (24)-hour period;

(2) more than one hundred (100) commercial electronic mail messages during a thirty (30)-day period; or

(3) more than one thousand (1,000) commercial electronic mail messages during a one (1)-year period;

(k) protected computer means a computer used in intrastate or interstate communication;

(l) routine conveyance means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message

for which another person has identified the recipients or provided the recipients' addresses.

§ 46.503. Violations.

A person may not conspire to or knowingly:

(a) use a protected computer of another to relay or retransmit multiple commercial electronic mail messages with the intent to deceive or mislead recipients or an electronic mail service provider as to the origin of the message;

(b) materially falsify header information in multiple commercial electronic mail messages and intentionally initiate the transmission of the messages;

(c) register, using information that materially falsifies the identity of the actual registrant, for fifteen (15) or more electronic mail accounts or on-line user accounts of two or more domain names, and intentionally initiate the transmission of multiple commercial electronic mail messages from one or any combination of accounts or domain names;

(d) falsely represent the right to use five (5) or more internet protocol addresses and intentionally initiate the transmission of multiple commercial electronic mail messages from the internet protocol addresses;

(e) access a protected computer of another without authorization, and intentionally initiate the transmission of multiple electronic mail advertisements from or through the protected computer;

(f) violate Subsections (a), (b), (c), (d) or (e) of this Section by providing or selecting addresses to which a message was transmitted, knowing that:

(1) the electronic mail addresses of the recipients were obtained using an automated means from an internet website or proprietary online service operated by another person; and

(2) the website or online service included, at the time the addresses were obtained, a notice stating that the operator of the website or online service

will not transfer addresses maintained by the website or online service to any other party for the purposes of initiating or enabling others to initiate electronic mail messages; or

(g) violate Subsections (a), (b), (c), (d) or (e) of this Section by providing or selecting electronic mail addresses of recipients obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

§ 46.504. Penalties.

(a) A person who violates § 46.503 (a), (b), (c), (d) or (e) is guilty of a third degree felony~~, and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars ($5,000), or both~~.

(b) A person who violates § 46.503 (a), (b), (c), (d) or (e) involving the transmission of more than two hundred fifty (250) commercial electronic mail messages during a twenty-four (24) hour period; two thousand five hundred (2,500) commercial electronic mail messages during any thirty (30)-day period; or twenty five thousand (25,000) commercial electronic mail messages during any one (1)-year period is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(c) A person who violates § 46.503 (c) or (d) involving twenty (20) or more electronic mail accounts, or ten (10) or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from the accounts or using the domain names is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(d) A person who violates § 46.503 (a), (b), (c), (d) or (e) that causes a loss of One Thousand Dollars ($1,000) or more during any one (1)-year period is guilty of

a third degree felony~~, and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars ($5,000), or both~~.

(e) A person who violates § 46.503 (a), (b), (c), (d) or (e) in concert with three (3) or more other persons as the leader or organizer of the action that constitutes the violation is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(f) A person who violates § 46.503 (a), (b), (c), (d) or (e) in furtherance of a felony, or who has previously been convicted of an offense under the laws of Guam, another state, or under any federal law involving the transmission of multiple commercial electronic mail messages is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed ten (10) years or a fine not to exceed Twenty Five Thousand Dollars ($25,000), or both~~.

(g) A person who violates § 46.503 (f) or (g) is guilty of a misdemeanor ~~felony, and upon conviction is subject to imprisonment not to exceed one (1) year or a fine not to exceed Five Thousand Dollars ($5,000), or both~~.

§ 46.506. Civil Action by Attorney General.

(a) An action brought under this Subsection shall be commenced within two (2) years after the commission of the act.

(b) The Attorney General may institute a civil action against a person who violates § 46.503 to recover a civil penalty not to exceed:

(1) $25,000 per day of violation; or

(2) not less than Two Dollars ($2.00) nor more than Eight Dollars ($8.00) per commercial electronic mail message initiated in violation of § 46.503.

(3) For any violation of this Act, the amount determined under paragraph (b) may not exceed Two Million Dollars ($2,000,000).

(c) The Attorney General may seek an injunction in a civil action to prohibit a person who has engaged in or is engaged in a violation of § 46.503 from engaging in the violation.

(d) The Attorney General may enforce criminal violations of this Act.

§ 46.507. Lawfulness of Electronic Mail Service Provider Policies.

Nothing in this Act shall be construed to have any effect on the lawfulness of the adoption, implementation, or enforcement by an electronic mail service provider of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages under any other provision of law.

§ 46.508. 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 6

COMPUTER SPYWARE PROTECTION ACT

§ 46.601. Title.

This Act may be cited as the "Computer Spyware Protection Act."

§ 46.602. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that spyware is a problem that adversely affects nearly every computer connected to the internet. Spyware is a catch-all term for computer programs that can track computer users' movements online. There are hundreds of programs that range from innocuous "ad-ware," which generates pop-up advertisements, to more dangerous programs that can record a user's keystrokes to gather personal information, such as credit card numbers and passwords, without their knowledge, and forward this information to another entity without the consumer's consent. Spyware is a serious problem that can create substantial privacy

risks, increase the risk of identity theft, and cause serious degradation to personal and business computers that can cost millions of dollars in lost productivity.

It is the intent of I Liheslatura to protect owners and operators of computers on Guam from the use of spyware and malware that is deceptively or surreptitiously installed on the owner's or the operator's computer.

§ 46.603. Definitions.

(a) Cause to be copied means to distribute or transfer computer software, or any component thereof. Such term shall not include providing:

(1) a transmission, routing, provision of intermediate temporary storage, or caching of software;

(2) a storage or hosting medium, such as a compact disk, website, or computer server through which the software was distributed by a third party; or

(3) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which the user of the computer located the software.

(b) Computer software means a sequence of instructions written in any programming language that is executed on a computer. Computer software does not include a data component of a web page that is not executable independently of the web page.

(c) Computer virus means a computer program or other set of instructions that is designed to degrade the performance of, or disable, a computer or computer network, and is designed to have the ability to replicate itself on other computers or computer networks without the authorization of the owners of those computers or computer networks.

(d) Damage means any significant impairment to the integrity or availability of data, software, a system, or information.

(e) Execute, when used with respect to computer software, means the performance of the functions or the carrying out of the instructions of the computer software.

(f) Intentionally deceptive means any of the following:

(1) an intentionally and materially false or fraudulent statement;

(2) a statement or description that intentionally omits or misrepresents material information in order to deceive an owner or operator of a computer; or

(3) an intentional and material failure to provide a notice to an owner or operator regarding the installation or execution of computer software for the purpose of deceiving the owner or operator.

(g) Internet means the global information system that is logically linked together by a globally unique address space based on the internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this Subsection.

(h) Owner or operator means the owner or lessee of a computer, or a person using such computer with the owner or lessee's authorization, but does not include a person who owned a computer prior to the first retail sale of the computer.

(i) Message means a graphical or text communication presented to an authorized user of a computer.

(j) Person means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(k) Personally identifiable information means any of the following information if it allows the entity holding the information to identify the owner or operator of a computer:

(1) the first name or first initial in combination with the last name;

(2) a home or other physical address including street name;

(3) a personal identification code in conjunction with a password required to access an identified account, other than a password, personal identification number or other identification number transmitted by an authorized user to the issuer of the account or its agent;

(4) a social security number, tax identification number, driver's license number, passport number, or any other government-issued identification number; or

(5) an account balance, overdraft history, or payment history that personally identifies an owner or operator of a computer.

§ 46.604. Prohibitions, Use of Software.

It is unlawful for a person who is not an owner or operator of a computer to cause computer software to be copied on such computer knowingly or with conscious avoidance of actual knowledge or willfully, and to use such software to do any of the following:

(a) modify, through intentionally deceptive means, settings of a computer that control any of the following:

(1) the web page that appears when an owner or operator launches an internet browser or similar computer software used to access and navigate the internet;

(2) the default provider or web proxy that an owner or operator uses to access or search the internet; or

(3) an owner's or an operator's list of bookmarks used to access web pages;

(b) collect, through intentionally deceptive means, personally identifiable information through any of the following means:

(1) the use of a keystroke-logging function that records all or substantially all keystrokes made by an owner or operator of a computer and transfers that information from the computer to another person;

(2) in a manner that correlates personally identifiable information with data regarding all or substantially all of the websites visited by an owner or operator, other than websites operated by the person providing such software, if the computer software was installed in a manner designed to conceal from all authorized users of the computer the fact that the software is being installed;

(3) by extracting from the hard drive of an owner's or an operator's computer, an owner's or an operator's social security number, tax identification number, driver's license number, passport number, any other government-issued identification number, account balances, or overdraft history for a purpose unrelated to any of the purposes of the software or service described to an authorized user;

(c) prevent, through intentionally deceptive means, an owner's or an operator's reasonable efforts to block the installation of or execution of, or to disable, computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer without the authorization of an authorized user;

(d) intentionally misrepresent that computer software will be uninstalled or disabled by an owner's or an operator's action;

(e) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus computer software installed on an owner's or an operator's computer;

(f) enable use of an owner's or an operator's computer to do any of the following:

(1) accessing or using a modem or internet service for the purpose of causing damage to an owner's or an operator's computer, or causing an owner or operator, or a third party affected by such conduct to incur financial charges for a service that the owner or operator did not authorize;

(2) opening multiple, sequential, stand-alone messages in an owner's or an operator's computer without the authorization of an owner or operator, and with knowledge that a reasonable computer user could not close the messages without turning off the computer or closing the software application in which the messages appear; provided, that this Subsection shall not apply to communications originated by the computer's operating system, originated by a software application that the user chooses to activate, originated by a service provider that the user chooses to use, or presented for any of the purposes described in §46.606;

(3) transmitting or relaying commercial electronic mail or a computer virus from the computer, where the transmission or relaying is initiated by a person other than the authorized user and without the authorization of an authorized user;

(g) modify any of the following settings related the computer's access to, or use of, the internet:

(1) settings that protect information about an owner or operator for the purpose of taking personally identifiable information of the owner or operator;

(2) security settings for the purpose of causing damage to a computer; or

(3) settings that protect the computer from the uses identified in Subsection (f) of this Section.

(h) prevent, without the authorization of an owner or operator, an owner's or an operator's reasonable efforts to block the installation of, or to disable, computer software by doing any of the following:

(1) presenting the owner or operator with an option to decline installation of computer software with knowledge that, when the option is selected by the authorized user, the installation nevertheless proceeds;

(2) falsely representing that computer software has been disabled;

(3) requiring in an intentionally deceptive manner the user to access the internet to remove the software with knowledge or reckless disregard of the fact that the software frequently operates in a manner that prevents the user from accessing the internet;

(4) changing the name, location or other designation information of the software for the purpose of preventing an authorized user from locating the software to remove it;

(5) using randomized or intentionally deceptive filenames, directory folders, formats, or registry entries for the purpose of avoiding detection and removal of the software by an authorized user;

(6) causing the installation of software in a particular computer directory or computer memory for the purpose of evading authorized users' attempts to remove the software from the computer; or

(7) requiring, without the authority of the owner of the computer, that an authorized user obtain a special code or download software from a third party to uninstall the software.

§ 46.605. Other Prohibitions.

It is unlawful for a person who is not an owner or operator of a computer to do any of the following with regard to the computer:

(a) induce an owner or operator to install a computer software component onto the owner's or the operator's computer by intentionally misrepresenting that installing computer software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content; or

(b) using intentionally deceptive means to cause the execution of a computer software component with the intent of causing the computer to use such component in a manner that violates any other provision of this Article.

§ 46.606. Exceptions.

Sections 46.604 and 46.605 shall not apply to the monitoring of, or interaction with, an owner's or an operator's internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, network management, authorized updates of computer software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing computer software prescribed under this Article.

§ 46.607. Remedies.

(a) The Attorney General, an internet service provider or software company that expends resources in good faith assisting authorized users harmed by a violation of this Article, or a trademark owner whose mark is used to deceive authorized users in violation of this Article, may bring a civil action against a person who violates any provision of this Article to recover actual damages, liquidated damages of at least One Thousand Dollars ($1,000) per violation of this Article, not to exceed One Million Dollars ($1,000,000) for a pattern or practice of such violations, attorney fees, and costs.

(b) The court may increase a damage award to an amount equal to not more than three times the amount otherwise recoverable under subsection 1 if the court determines that the defendant committed the violation willfully and knowingly.

(c) The court may reduce liquidated damages recoverable under subsection 1, to a minimum of one hundred dollars, not to exceed one hundred thousand dollars for each violation if the court finds that the defendant established and implemented practices and procedures reasonably designed to prevent a violation of this Article.

(d) In the case of a violation of § 46.604(f)(1) that causes a telecommunications carrier or provider of voice over internet protocol service to incur costs for the origination, transport, or termination of a call triggered using the modem or internet-capable device of a customer of such telecommunications carrier or provider as a result of such violation, the telecommunications carrier may bring a civil action against the violator to recover any or all of the following:

(1) the charges such carrier or provider is obligated to pay to another carrier or to an information service provider as a result of the violation, including, but not limited to, charges for the origination, transport or termination of the call;

(2) costs of handling customer inquiries or complaints with respect to amounts billed for such calls;

(3) costs and a reasonable attorney's fee; and

(4) an order to enjoin the violation.

(e) For purposes of a civil action under Subsections (a), (b) and (c), any single action or conduct that violates more than one Subsection of this Article shall be considered multiple violations based on the number of such Subsections violated.

§ 46.608. Good Samaritan.

(a) No provider of computer software or of an interactive computer service may be held liable for identifying, naming, removing, disabling, or otherwise affecting a

computer program through any action voluntarily undertaken, or service provided, where the provider:

(1) intends to identify accurately, prevent the installation or execution of, remove, or disable another computer program on a computer of a customer of such provider;

(2) reasonably believes the computer program exhibits behavior that violates this Act; and

(3) notifies the authorized user and obtains clear and conspicuous consent before undertaking such action or providing such service.

(b) A provider of computer software or interactive computer service is entitled to protection under this Section only if such provider:

(1) has established internal practices and procedures to evaluate computer programs reasonably designed to determine whether or not a computer program exhibits behavior that violates this Act; and

(2) has established a process for managing disputes and inquiries regarding misclassification or false positive identifications of computer programs. Nothing in this Section is intended to limit the ability of the Attorney General, or a District Attorney, to bring an action against a provider of computer software or of an interactive computer service.

Section 19. Chapter 47 (Trademark Counterfeiting Act), Title 9, Guam Code Annotated was reviewed and no changes are recommended to this Chapter.

Section 20. Chapter 48 (Notification of Breaches of Personal Information), Title 9, Guam Code Annotated was reviewed and no changes are recommended to this Chapter.

Section 21. Chapter 52, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows:

CHAPTER 52

PERJURY AND OFFENSE AGAINST THE INTEGRITY OF OFFICIAL PROCEEDINGS

§ 52.10. Definitions.

As used in this Chapter:

~~(a) *official function* and *public servant* have the meanings provided for those terms by § 49.10.~~

(~~b~~a) *material statement* means a statement which affected or could have affected the course or outcome of a proceeding, regardless of its admissibility under rules of evidence.

(b) *official function* means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.

(c) *official proceeding* means a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer an oath or cause it to be administered, including any referee, hearing officer, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

~~(d) *public record* means any record, document, thing belonging to, or received or kept by the Government of Guam or any governmental instrumentality within the Territory.~~

(d) *public servant* means any officer, member, or employee of the legislative, executive, or judicial branches of Guam or of any governmental instrumentality within Guam, any juror, any persons exercising the functions of any such position, or any referee, arbitrator, hearing officer, or other person authorized by law to hear or determine any question or controversy. It includes a person who has been elected, appointed or designated to become a public

servant, and, in the case of a juror, a person who has been drawn, empaneled, or designated to attend as a prospective grand or petit juror.

(e) *statement* means any ~~non-trivial~~ representation, but includes a representation of opinion, belief or other state of mind ~~is a statement~~ only if it clearly relates to a state of mind apart from or in addition to the facts which it otherwise represents.

(f) *statement under oath* means

(1) a statement made pursuant to a swearing, an affirmation, or any other mode authorized by law of attesting to the truth of that which is stated; and

(2) a statement made on a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

~~(3) testimony means oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.~~

(g) *testimony* means oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.

§ 52.15. Perjury; Defined & Punished.

(a) A person is guilty of perjury if, under oath in an official proceeding, he makes a false statement which is material and which he does not believe to be true.

(b) Whether a statement is material is a question of law.

(c) Perjury is a felony of the third degree.

§ 52.20. False Statement Under Oath; Defined & Punished.

A person is guilty of a misdemeanor if he makes a false statement under oath which he does not believe to be true and:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is intended to mislead a public servant in performing his official function.

§ 52.25. Unavailability of Certain Defenses.

It is not a defense to any offense defined in § 52.15 or § 52.20 that:

(a) the oath was administered or taken in an irregular manner;

(b) the authority or jurisdiction of the person administering the oath was defective, if the defect was excusable under any statute or rule of law;

(c) the statement was subject to a proper objection, whether or not such objection was made; or

(d) the defendant mistakenly believed the falsification to be immaterial, where materiality of the statement is an element of the offense.

§ 52.30. Unsworn Falsifications; Defined & Punished.

A person is guilty of a misdemeanor if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

(a) any ~~written~~ false statement, in written or electronic format, ~~of his own~~ which he does not then believe to be true; or

(b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

§ 52.40. Intimidation of Witnesses by Extortion; Defined & Punished.

A person is guilty of a felony of the third degree if, by any threat which would constitute a means of committing the offense of theft by extortion under this Code if such threat were employed to obtain property, he:

(a) attempts to induce any person to refrain from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; or

(b) attempts to induce any person who has been or may be properly called as a witness in any official proceeding to give false testimony in, to withhold testimony or information from, or to fail to attend, any such proceeding.

§ 52.45. Witness Bribery: Solicitation: Definitions; Punishment; Affirmative Defenses.

A person is guilty of a felony of the third degree if he:

(a) offers, confers upon, or agrees to confer upon, any person any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to any offense; provided that it is an affirmative defense to a prosecution under this Subsection that the benefit was honestly offered or conferred as restitution or indemnification for harm done in the circumstances of the offense;

(b) offers, confers upon, or agrees to confer upon, any person who has been or may be properly called as a witness in an official proceeding any benefit as consideration for giving false testimony or information, for withholding testimony or information from, or for failing to attend, any such official proceeding;

(c) solicits, accepts or agrees to accept any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information, relating to an offense; provided that it is an affirmative defense to a prosecution under this Subsection that the benefit was honestly claimed as restitution or indemnification for harm done in the circumstances of the offense; or

(d) solicits, accepts or agrees to accept, in connection with any official proceeding to which he has been or may be properly called as a witness, any benefit as consideration for giving false testimony or information in, for withholding testimony or information from, or for failing to attend, any such official proceeding.

§ 52.50. Tampering with Witnesses: Defined and Punished.

A person is guilty of a misdemeanor if he attempts to induce any person to give false testimony in or to withhold testimony from any official proceeding to which he has been or may be properly called as a witness, or to fail to attend any official proceeding to which he has been lawfully called as a witness.

§ 52.55. Falsifying Evidence; Defined & Punished.

A person is guilty of a ~~felony of the third degree~~ misdemeanor if, believing that an official proceeding has been or is about to be instituted, he prepares, offers in evidence or uses any record, document or thing in any form, including written or electronic format, knowing it to be false and with intent to mislead a public servant who is or may be engaged in the proceeding.

§ 52.60. Destroying Evidence; Defined & Punished.

A person is guilty of a misdemeanor if, believing that an official proceeding has been or is about to be instituted, he destroys, conceals or removes any record, document or thing in any form, including written or electronic format, with intent to impair its availability in the proceeding.

§ 52.65. Unlawful Communication With Jurors; Defined & Punished.

A person is guilty of a misdemeanor if, with intent to influence the outcome of an official proceeding, he communicates with a juror, except as may be authorized by law.

Section 22. Chapter 55, Title 9, Guam Code Annotated, is hereby *repealed and reenacted in its entirety as follows:*

CHAPTER 55

INTERFERENCE WITH GOVERNMENT OPERATIONS AND LAW ENFORCEMENT

§ 55.10. Tampering With Public Records; Defined & Punished.

(a) Public record means any record, document or thing in any form, including written or electronic format, belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the

government.

(~~a~~b) A person commits ~~an~~ the offense of tampering with public records if he:

(1) knowingly makes a false entry in, or false alteration of~~,~~ a public record ~~any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government~~;

(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in ~~Paragraph (1)~~ Subsection (a); or

(3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of a public record ~~any such record, document or thing~~.

(~~b~~c) An offense under this Section is a misdemeanor unless the defendant's intent is to defraud or injure anyone, in which case the offense is a felony of the third degree.

§ 55.15. Hindering Apprehension or Prosecution; Defined & Punished.

(a) A person is guilty of the offense of hindering apprehension or prosecution if, with intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of an offense, he:

(1) harbors or conceals the other person;

(2) provides or aids in providing a weapon, transportation, disguise or other means of avoiding discovery or apprehension;

(3) conceals, alters or destroys ~~and~~ any physical evidence that might aid in the discovery, apprehension or conviction of such person;

(4) warns such person of impending discovery or apprehension, except that this Paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;

(5) obstructs by force, intimidation or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person; or

(6) aids such person to safeguard the proceeds of or to profit from such offense.

(b) Hindering apprehension or prosecution is a felony of the third degree if the defendant knows that the charge made or liable to be made against the other person is a felony of the first or second degree. Otherwise the offense is a misdemeanor.

§ 55.20. False Alarms; Defined & Punished.

(a) A person is guilty of a misdemeanor when, with knowledge of its falsity, he causes a false alarm of fire or other emergency to be transmitted to any organization that responds to emergencies involving danger to life or property.

(b) A person is guilty of a misdemeanor when, with knowledge of its falsity, he initiates or circulates a false alarm of fire or other emergency knowing that the alarm is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm.

(c) A person is guilty of a felony of the third degree if the false alarm involves a report or warning of an impending bombing, hostage situation, person armed with a deadly weapon as defined by 9 GCA § 16.10, or any other incident that elicits an immediate or heightened response by law enforcement or emergency services.

§ 55.25. Making False Reports; Defined & Punished.

(a) A person commits a ~~misdemeanor~~ felony of the third degree who~~: (a)~~ knowingly gives false information to any ~~law enforcement~~ peace officer with intent to induce such officer to believe that another person has committed an offense~~;~~.

(b) A person commits a misdemeanor who:

(1) reports to ~~law enforcement authorities~~ any peace officer an offense or other incident within their concern knowing that it did not occur, or

~~(c)~~(2) makes a report which purports to furnish ~~law enforcement authorities~~ any peace officer with information relating to an offense or incident when he knows that he has no such information.

§ 55.30. Impersonating a Public ~~Officer~~Servant or Peace Officer; Defined & Punished.

(a) A person commits a misdemeanor if he falsely pretends to hold a position in the public service with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(b) A person commits a felony of the third degree if he falsely pretends to hold a position as a peace officer or member or employee or agent of any organization or association of peace officers with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

§ 55.35. Resisting Arrest of Self or Others; Defined & Punished.

A person is guilty of a misdemeanor when, with intent to prevent or delay the arrest of himself of another person by one whom he knows or reasonably should know to be a peace officer acting in an official capacity, he prevents or delays that arrest by the use or threat of force or by physical obstruction. For purposes of this Section, a peace officer shall include apprehending officers designated under Article 2 of 10 GCA Chapter 51, as well as peace officers as defined under ~~9 GCA § 1.70~~ 8 GCA § 5.55.

§ 55.40. Disarming of a Peace Officer; Defined & Punished.

(a) A person commits the ~~crime~~ offense of disarming a peace officer, as defined by 17 GCA § 51101 if such person intentionally:

(1) removes, or attempts to remove, a firearm, deadly weapon, or less-lethal weapon, including any blunt impact, chemical, or conducted energy device, used in the performance of his or her official duties from the person of a peace officer while said officer is acting within the scope of his or her official duties; or

(2) deprives, or attempts to deprive, a peace officer of said officer's use of a firearm, deadly weapon, or any other equipment described in Subsection (a)(1) of this Section while the officer is acting within the scope of his or her official duties.

(b) The provisions of this Section *shall not* apply when:

(1) the defendant does not know or could not reasonably have known that the person he or she disarmed was a peace officer; or

(2) the peace officer was engaged in an incident involving felonious conduct by the peace officer at the time the defendant disarmed said officer.

(c) An offense under this Section is a felony of the third degree, unless the defendant's intent is to injure anyone, in which case the offense is a felony of the second degree.

§ 55.45. Obstructing Governmental Functions; Defined & Punished.

A person commits a misdemeanor if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

§ 55.50. Damaging, Stealing or Receiving Stolen Government Generators, Telephones, or Emergency or Utility Equipment.

A person commits a felony in the second degree if he intentionally damages or steals any generator, power pole, power line, telephone, telephone line, telephone facility, water meter, or other emergency or utility equipment <u>or vehicle</u> owned or installed by the government of Guam, its agencies or instrumentalities.

§ 55.51. Receiving Stolen Government Generators, Telephones or Emergency Utility Equipment.

A person commits a felony in the second degree if he receives any stolen generator, power pole, power line, telephone, telephone line, telephone facility, water meter, or other emergency or utility equipment or vehicle owned or installed by the government of Guam, its agencies or instrumentalities, knowing such item is stolen.

§ 55.60. Public Water, Unlawful Use During Period of Emergency.

(a) Upon the declaration by the Governor of a state of emergency as the result of a disaster that threatens the public water supply, it shall be a petty misdemeanor for any person to use water supplied by the ~~Public Utility Agency of Guam~~ Guam Waterworks Authority for any unauthorized use.

(b) During a state of emergency public water is authorized to be used for purposes of public health, safety and welfare. Any use of the public water during a state of emergency for a use not pertaining to public health, safety and welfare shall not be authorized. Such unauthorized uses shall include, but not be limited to, washing motor vehicles, windows, streets, sidewalks and buildings or irrigating or watering ornamental plants, shrubs, flower, lawns or golf courses.

(c) In addition to any other penalty imposed by the court upon conviction under this section, a conviction arising from unauthorized use of water for a business or commercial purpose shall be punished by a fine of not less than One Thousand Dollars ($1,000) nor more than Twenty-Five Thousand Dollars ($25,000).

(d) No state of emergency proclaimed by the Governor shall be for a period of more than fifteen (15) days. The Governor may proclaim successive states of emergency if he deems such proclamation to be in the public interest.

§ 55.65. Failure to File a Complete Partial-Birth Abortion and Abortion Report.

A person commits a misdemeanor who knowingly fails to file a complete individual abortion report for each abortion with the Territorial Registrar of Vital Statistics within seven (7) days from the date of the abortion.

Section 23. Chapter 70, Title 9, Guam Code Annotated, is hereby *repealed and reenacted in* its entirety as follows:

CHAPTER 70

MISCELLANEOUS CRIMES

ARTICLE 1

PROTECTING ANIMAL WELFARE AND SAFETY (PAWS) ACT (PUGUA'S LAW)

§ 70.10. Title.

Sections 70.10 through 70.85 of this Article may be cited as the *Protecting Animal Welfare and Safety (PAWS) Act* or *Pugua's Law.*

§ 70.15. Definitions.

For the purposes of §§ 70.10 through 70.85 of this Article:

(a) *Animal* means any nonhuman mammal, bird, reptile, amphibian, or fish, and is inclusive of, but not limited to, livestock and domestic animals.

(b) *Caregiving agency* means an animal shelter, humane society, or other animal care agency that has as its principal purpose the humane treatment of animals, and that has temporary custody of an animal after the animal has been seized.

(c) *Domestic animal* means any animal, other than livestock, that is owned by a person or in a person's possession.

(d) *Good animal husbandry* includes, but is not limited to, the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, or the ear cropping and tail docking of dogs, according to accepted practices of veterinary medicine or animal husbandry.

(e) *Guardian* means a person who has possession, title, ownership interest,

or other legal interest in an animal.

(f) *Livestock* means cattle, carabao, swine, deer, sheep, goats, equine, and poultry raised for labor, food, or other purposes.

(g) *Minimum care* means care reasonably sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the guardian, includes, but is not limited to, the following requirements:

(1) open or adequate access to food of reasonable quantity and quality to allow for normal growth or maintenance of body weight;

(2) open or adequate access to potable water of reasonable quality and quantity to satisfy the animal's needs;

(3) access to a structure reasonably sufficient to protect the animal from wind, rain, sun, or other environmental or weather conditions;

(4) veterinary and other care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect, or disease;

(5) for a domestic animal, continuous access to an area:

(A) with reasonably adequate space for exercise necessary for the health of the animal;

(B) with air temperature reasonably suitable for the health of the domestic animal;

(C) with adequate ventilation;

(D) with regular diurnal lighting cycles of either natural or artificial light; and

(E) kept reasonably clean and free from excess waste or other contaminants that could affect the health of the animal(s).

(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.~~

(i) *Person* means an individual, corporation, trust, partnership, association, or any other legal entity.

(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~~.

(k) *Physical trauma* means fractures, cuts, punctures, bruises, burns, or other wounds.

(l) *Possession* means to have physical custody or to exercise dominion with intent of ownership or control over an animal.

(m) *Serious physical injury* means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of a limb, body part, or bodily organ.

(n) *Torture* means an action taken with the intent of inflicting or prolonging pain or suffering.

(o) *Suffering* means fear, agitation, severe depression or stress, or other forms of severe emotional or mental distress.

§ 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 an offense punishable by a fine of not more than Five Hundred Dollars ($500) per offense~~ a violation.

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

§ 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.

§ 70.30. Aggravated Animal Abuse.

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

(1) tortures an animal; or

(2) causes the death of an animal under circumstances demonstrating malice aforethought.

(b) Aggravated Animal Abuse is a second degree felony.

(c) Each act or omission in violation of Subsection (a) of this Section shall

constitute a separate offense.

§ 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,~~ Aany 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.

(e) Nothing in this Section shall constitute a prohibition or ban on the possession, lawful importation/exportation, breeding, or selling of any breed of dog.

(f) Veterinarians and/or physicians and/or health professionals are required to report suspected animal fighting incidents, excluding cockfighting as authorized by law, that come to their attention through the provision of medical services to an animal to the Guam Police Department within five (5) days of learning of animal fighting incidents. Failure to do so shall result in potential loss of licensure if deemed appropriate by the appropriate licensure agencies. Any veterinarians, physicians, or health professionals making a report under this Subsection shall be immune from any civil or criminal liability by reason of making the report, unless the report was made in bad faith.

§ 70.40. Sexual Assault of an Animal.

(a) A person commits the crime of Sexual Assault of an Animal if the person knowingly:

(1) touches or contacts, or causes an object or another person to touch or

contact, the mouth, anus, or sex organs of an animal or animal carcass for the purpose of arousing or gratifying the sexual desire of a person; or

(2) causes an animal or animal carcass to touch or contact, the mouth, anus, or sex organs of a person for the purpose of arousing or gratifying the sexual desire of a person.

(b) Sexual Assault of an Animal is a third degree felony.

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

§ 70.45. Bodily Alterations, Disablements, or Removals.

(a) It is unlawful for any person to remove or permanently alter or disable, or cause or procure to be removed or permanently altered or disabled, any part or organ, or the function of any part or organ, of an animal, except as necessary for proper and lawful veterinary care, population control, or good animal husbandry; provided, that population control or good animal husbandry is under the supervision or instruction of a licensed veterinarian, and:

(1) all surgical procedures must be performed or supervised by a licensed veterinarian in accordance with the American Veterinarian Medical Association policy, and the veterinarian shall counsel pet owners about the matter before agreeing to perform these surgeries and shall record said consultation in the pet's record; and

(2) any person performing procedures for population control of livestock or good animal husbandry for livestock may do so without direct supervision of a licensed veterinarian; provided, that said person has been properly trained by a licensed veterinarian and properly conducts said procedures in accordance with generally accepted industry standards.

(b) A violation of Subsection (a) of this Section is a misdemeanor.

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

separate offense.

§ 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)~~70.15(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.

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

~~(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.~~

§ 70.60. Leaving Animals Unattended in Motor Vehicles; Penalty; Authority of Officers.

(a) For the purposes of this Section:

(1) *Vehicle* means a car, truck, camper, trailer, or other form of transportation in which an animal can be transported.

(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.

(b) A person shall not confine an animal in a vehicle in a manner that could reasonably be expected to threaten the health, safety, and well-being of the animal due to conditions that include, but are not limited to, extreme temperatures, lack of adequate ventilation, lack of food or water, or confinement with a vicious or dangerous animal, or other circumstances that could reasonably be expected to cause suffering, disability, physical injury, or death to the animal.

(c) After making reasonable efforts to locate the vehicle's owner, an animal control officer, peace officer, law enforcement officer, or firefighter may enter a vehicle by any reasonable means to protect the health, safety and well-being of an animal who is endangered by confinement in a vehicle. A peace officer, law enforcement officer, animal control officer, or firefighter may enter the vehicle for the sole purpose of assisting the animal and may not search the vehicle or seize items found in the vehicle unless otherwise permitted by law.

(d) An animal control officer, peace officer, law enforcement officer, or firefighter who removes or otherwise retrieves an animal under this Section shall:

(1) leave written notice in a secure and conspicuous location on or in the vehicle bearing the officer's or firefighter's name and title, and the address of the location where the animal may be retrieved; and

(2) take the animal to a veterinary clinic or animal shelter for a health screening and treatment.

(e) An animal control officer, peace officer, law enforcement officer, or firefighter who removes or otherwise retrieves an animal from a vehicle under this Section shall be immune from criminal or civil liability that might otherwise result from the removal.

(f) Penalties.

(1) A person in violation of Subsection (b) of this Section shall be subject to

a fine of not more than Five Hundred Dollars ($500).

(2) The owner may retrieve the animal removed by an officer or firefighter only after payment of all charges that have accrued for the maintenance, care, medical treatment, and impoundment of the animal.

§ 70.65. Defenses; Exceptions.

(a) It is an affirmative defense in a prosecution for violation of animal abuse under § 70.25 (a) of this Article if:

(1) the defendant reasonably and humanely caused the death of the animal to end its immediate and intractable suffering; or

(2) the animal posed a present and immediate danger to the safety of people, and the defendant took reasonable measures necessary to protect against serious bodily harm, or death, to themselves or other people, livestock, or domestic animals.

(b) Ownership shall not be a defense.

(c) Guardianship shall not be a defense.

(d) Trespass by an animal shall not be a defense.

(e) Corporations and other nonhuman legal entities may be concurrently charged for acts in violation of any animal protection offense committed by their employees or agents when the act is committed in the normal course and scope of the employment or agency.

(f) It is no defense to the crime of animal abandonment that the defendant abandoned the animal at or near an animal shelter, veterinary clinic, or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

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

(1) the proper shooting or taking of game in such manner and at such times as is allowed or provided by the laws of Guam;

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

(~~3~~2) the proper killing of animals used for food~~, except for dogs and cats,~~ in accordance with the law;

(~~4~~3) the proper disinfestation of rodents and brown tree snakes;

(~~5~~4) animals properly used for education or research purposes by, or under the oversight of, the Guam Community College or the University of Guam; provided, that proper Institutional Review Board procedures and all applicable local and federal laws are followed;

(~~6~~5) euthanasia as properly conducted by a licensed veterinarian, or individual authorized by § 70.70 of this Article, and done in accordance with local law and generally accepted industry practice;

(~~7~~6) the proper disinfestation of animals deemed a disease vector and threat to public health by the Department of Public and Social Services; provided, that disinfestation is done in accordance with established procedures approved by said Department;

(~~8~~7) the proper disinfestation of species deemed invasive to Guam by the Guam Invasive Species Council; provided, that disinfestation is done in accordance with established procedures approved by said Council.

(A) Subsection (g)(~~8~~7) of this Section shall not pertain to cats or dogs, except as authorized by the Director of the Department of Agriculture, and such disinfestation efforts are done in accordance with accepted practices of veterinary medicine and procedures approved by the Council.

§ 70.70. Euthanasia Procedures.

(a) Unless otherwise authorized by law, sodium pentobarbital and such other agents as may be specifically approved by the Guam Board of Allied Health

Examiners shall be the only methods used for euthanasia of an animal. A lethal solution shall be used in the following order of preference:

(1) intravenous injection by hypodermic needle;

(2) intraperitoneal injection by hypodermic needle;

(3) intracardial injection by hypodermic needle, but only if performed on heavily sedated, anesthetized, or comatose animals; or

(4) solution or powder added to food.

(b) An animal may be tranquilized with an approved and humane substance before euthanasia is performed.

(c) Succinylcholine chloride, curare, curariform mixtures, strychnine, nicotine, chloral hydrate, magnesium, potassium, or any substance which acts as a neuromuscular blocking agent, or any chamber which causes a change in body oxygen, may not be used on any animal for the purpose of euthanasia.

(d) Euthanasia shall be performed only by a licensed veterinarian, trained animal control officers, or an employee or agent, in accordance with § 121906 of Article 19, Part 2, Chapter 12, Title 10, Guam Code Annotated.

(e) An animal may not be left unattended between the time euthanasia procedures are first begun and the time that death occurs, and the animal's body may not be disposed of until a licensed veterinarian, or person, as authorized by § 121906 of Article 19, Part 2, Chapter 12, Title 10, Guam Code Annotated, confirms death.

(f) Notwithstanding the provisions of this Section or any other law to the contrary, whenever an emergency situation exists which requires the immediate euthanasia of a seriously injured, dangerous, or severely diseased animal, a peace officer or veterinarian may humanely destroy the animal.

(g) The remains of the euthanized animal shall be properly disposed of in accordance with Guam law.

(h) Any violation of this Section is a misdemeanor.

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

§ 70.75. Pre-Trial Provisions.

(a) Reporting and Immunity.

(1) The following designees, having a good-faith belief that any animal with whom the designee comes in contact has suffered a violation of this Article or that any person with whom the designee comes in contact has committed a violation of this Article, may report, or cause a report to be made to the Animal Control Division of the Department of Agriculture:

(A) a police officer; or

(B) a licensed social worker.

(2) Any designee making a report under this Subsection shall not be required to report such information communicated by a person if the communication is privileged under Guam law.

(3) Any designee making a report under this Subsection shall be immune from any civil or criminal liability by reason of making the report, unless the report was made in bad faith.

(b) Law Enforcement Policies.

(1) All officers as defined in § 70.15 of this Article have the duty and responsibility to enforce this Article to the extent authorized by law.

(2) All volunteer animal control officers, volunteer conservation officers, or similar volunteer law enforcement officers, whose positions are established by the government of Guam, have the duty and responsibility to enforce this Article to the extent authorized by law.

(c) Seizure.

(1) Search and Seizure With a Warrant. If there is probable cause to believe that an animal is being subjected to treatment in violation of this Article, an

officer, after obtaining a search warrant, shall enter the premises where the animal is located and seize the animal.

(2) Search and Seizure Without a Warrant. If an officer witnesses a situation in which the officer determines that an animal's life is in jeopardy and immediate action is required to protect the animal's health or safety, the officer may seize the animal without a warrant. The officer shall immediately take an animal seized under this Subsection to a licensed veterinarian or animal shelter for medical attention to stabilize the animal's condition and to assess the health of the animal.

(3) Any person or facility receiving an animal seized pursuant to this Subsection shall provide the animal with minimum care.

(4) An officer shall not be liable for any damages for an entry under this Subsection.

(5) Any guardian of an animal that is impounded pursuant to this Subsection shall, within seventy-two (72) hours following the seizure, be given written notice of the seizure and legal remedies available to the guardian. The written notice shall be posted at the place of seizure, or delivered to an employee at the place of impoundment, or by registered mail if the guardian is known.

(6) The guardian from whom an animal is seized pursuant to this Subsection shall, within seventy-two (72) hours following the seizure, be given written notice of the seizure and legal remedies available to the guardian. The notice shall, at a minimum, be given by posting at the place of seizure, or by delivery to a person residing or working at the place of seizure, or by certified mail. Such notice shall include:

(A) the name, business address, and telephone number of the law enforcement entity responsible for seizing the animal;

(B) a description of the seized animal;

(C) the authority and purpose for the seizure, including the time, place, and circumstance under which the animal was seized; and

(D) a statement that the guardian is responsible for the cost of care for an animal who was lawfully seized, and that the guardian will be required to post a bond with the court to defray the cost of care or the animal will be deemed forfeited.

(d) Costs-of-Care Bonds.

(1) An animal that has been impounded pending outcome of a criminal case, including charges under this Article, may prevent disposition of the animal by a caregiving agency that has temporary custody of the animal by posting a bond with the court in an amount the court determines is sufficient to provide for the animal's minimum care for at least thirty (30) days, including the day on which the animal was taken into custody.

(A) Such bond shall be filed with the court within ten (10) days after the animal is impounded. If a bond is not so posted, the animal shall be deemed forfeited and the custodial caregiving agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals. At the end of the time for which expenses are covered by the bond, if the owner, guardian, or person in possession of an animal, desires to prevent disposition of the animal by the custodial caregiving agency, a new bond shall be posted with the court within ten (10) days following the prior bond's expiration.

(B) If a new bond is not so posted, the animal shall be deemed forfeited and the custodial caregiving agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals.

(C) However, nothing in this Subsection shall prohibit the immediate

disposition of the animal by euthanasia if, in the opinion of a licensed veterinarian, the animal is experiencing intractable extreme pain or suffering. The guardian shall be liable for all costs of providing minimum care, or disposal of the animal.

(2) If a bond has been posted in accordance with Subsection (d)(1) of this Section, the custodial caregiving agency may draw from the bond the actual reasonable costs incurred by the agency in providing minimum care to the seized animal from the date of initial seizure to the date of final disposition of the animal in the criminal action.

(e) Protective Orders.

(1) A mandatory restraining order is created against any person charged with a felony under this Article.

(2) The order may remain in effect from the time that the defendant is advised of their rights at arraignment or the defendant's first appearance before the court and informed of such order, until final disposition of the action.

(3) The order may restrain the defendant from contacting, harassing, molesting, intimidating, retaliating against, or tampering with:

(A) any animal(s) victimized by the acts charged;

(B) any guardian or owner, other than the defendant, of such animal(s); or

(C) any witness to the acts charged.

(4) Any restraining order issued pursuant to Subsection (e) of this Section, shall be on a standardized form prescribed by the Superior Court of Guam.

(5) A copy of the restraining order shall be provided to the protected parties.

(6) The court may include an animal in any protective order authorized by this Article.

§ 70.80. Sentencing Provisions.

(a) Community Service. In addition to any other sentence it may impose, the court may order the defendant to participate in community service. No such participation shall occur at any humane society, animal shelter, or other facility where an animal is present, unless first approved by said organization.

(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.

(2~~3~~) Treatment may include, but is not limited to, counseling and humane education classes.

(34) Treatment may be conducted in-person or online.

(4~~5~~) All costs of the evaluation, care and treatment shall be borne by the defendant. However, if the court determines that the defendant is indigent, the government of Guam may provide access to government funded or government contracted service providers, if available.

(c) Education. The Department of Agriculture shall make available educational material and information regarding proper animal care and welfare to the defendant. At a minimum, such information shall be made available in printed form or online, as deemed appropriate by the Department of Agriculture.

(d) Forfeiture. In addition to any other sentence it may impose, the court shall require a defendant convicted under this Article to forfeit all legal interest of the defendant in the animal subjected to the violation. The court shall award all such interest to the animal to a caregiving agency.

(e) Contact with Animals.

(1) In addition to any other penalty imposed by law, a court may require a defendant convicted of a felony under this Article to not own, possess, or have custody or control of any animal for a minimum period of five (5) years on a first offense; and for a minimum period of fifteen (15) years on a second or subsequent offense.

(2) A violation of this Subsection is a petty misdemeanor and shall result in the forfeiture of the offender's interest in the animal.

(3) Notwithstanding any other provision of law, an officer may immediately seize any animal found to be kept in violation of this Subsection.

(f) Reimbursement of Costs to Caregiving Agency. In addition to any other sentence it may impose, the court shall require a defendant convicted under this Article to repay all reasonable costs incurred by any person or organization prior to judgment in seizing and providing minimum care for each animal subjected to mistreatment in violation of this Article.

(g) Restitution to Guardian. In addition to any other sentence it may impose, the court shall order that restitution be made by a defendant convicted under this Article to the guardian of any animal subjected to mistreatment by the defendant in violation of this Article. The measure for restitution shall be the actual pecuniary value of such loss, including, but not limited to, the actual veterinary expenses, special supplies, and other costs incurred by the animal's guardian in treating the animal and in attempting to restore the animal to good health or to otherwise ameliorate the effects of the criminal violation.

§ 70.85. Civil Right of Action for the Wrongful Injury or Death of an Animal.

(a) Any person who, with no lawful authority, intentionally, knowingly, recklessly, or with criminal negligence causes physical injury to, or the death of, an animal shall be liable to the animal's guardian for the damages sustained by the guardian. The guardian of the animal may bring a civil action to recover such

damages. Damages may include the pecuniary value of the animal; veterinary expenses incurred on behalf of the animal; any other expenses incurred by the guardian in attempting to ameliorate the effects of, or as a consequence of, the pain, suffering or injuries of the animal; any emotional distress and loss of companionship suffered by the guardian; all court costs and reasonable attorney's fees incurred in the prosecution of any action under this Section; and any other reasonable damages resulting from the physical injury or death of the animal.

(b) Restraining orders and other injunctive relief may be issued by the Superior Court of Guam as appropriate.

(c) The remedies provided in this Section are in addition to, and do not replace or supplant, any other remedies allowed by law.

(d) Commencement of a cause of action under this Section shall be brought within three (3) years from the date on which damages were first identified by the guardian.

ARTICLE 2

DISCRIMINATION IN HOUSING ACCOMMODATIONS

§ 70.210. Declaration of Policy.

It is hereby declared to be the policy of the territory of Guam in the exercise of its police power for the public safety, public health and general welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, sex or national origin and, to that end, to prohibit discrimination in housing by any person.

§ 70.220. Definitions.

When used in this Article:

(a) Discrimination or discriminatory housing practice means any difference in treatment based upon race, color, religion, sex or national origin, or any act that is unlawful under this Article;

(b) Financial institution includes any person, as defined herein, engaged in the business of lending money or guaranteeing losses;

(c) Housing accommodation or dwelling means any building, mobile home or trailer, structure or portion thereof which is occupied as or designed, or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure or portion thereof, or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this Subsection;

(d) Mortgage broker means an individual who is engaged in or who performs the business or services of a mortgage broker as the same are defined in the Government Code;

(e) Open market means the market which is informed of the availability for sale, purchase, rental or lease of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs or by any other advertising methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental or lease;

(f) Owner includes a lessee, sub-lessee, cotenant, assignee, managing agent or other person having the right of ownership or possession, or the right to sell, rent or lease any housing accommodation;

(g) Person includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations;

(h) Real property includes buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums; and

(i) Real estate broker or real estate salesman includes any individual, qualified by law, who, for a fee, commission, salary or for other valuable

consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents or leases any housing accommodations, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collecting of a fee in connection with a contract whereby he undertakes or promote the sale, purchase, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

§ 70.230. Unlawful Practices.

In connection with any of the transactions set forth in this Section, which affect any housing accommodation on the open market or in connection with any public sale, purchase, rental or lease of any housing accommodation, it shall be unlawful within the Territory for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above, to:

(a) refuse to sell, purchase, rent or lease, or deny to or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(b) to discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities of services in connection therewith;

(c) to refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(d) to refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(e) to represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation, because of his race, color, religion or national origin, sex or place of birth;

(f) to make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form or application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to make a discrimination;

(g) to offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith;

(h) to induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, sex or national origin or place of birth in the area to be affected by such sale, purchase, rental or lease will or may result in either:

(1) the lowering of property values in the area;

(2) an increase in criminal or antisocial behavior in the area; or

(3) a decline in the quality of schools serving the area;

(i) to make any misrepresentations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for any of the above, or the sale, purchase, rental or lease of any housing accommodation in any area in the Territory for the purpose of including or attempting to induce any such listing or any of the above transactions;

(j) to engage in, or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest or create or play upon fear, with the purpose of either discouraging or inducing, or attempting to induce, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation;

(k) to retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this Article, or because he has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this Article;

(l) to aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this Article, or to obstruct or prevent any person from complying with the provisions of this Article, or any order issued thereunder;

(m) by canvassing, to commit any unlawful practices prohibited by this Article;

(n) otherwise to deny to, or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(o) for any bank, savings and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part, in the making of commercial real estate loans, to deny a loan or other

financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration or other terms or conditions of such loans or other financial assistance, because of the race, color, religion, sex or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance or of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; or

(p) to deny any qualified person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership or participation on account of race, color, religion, sex or national origin.

§ 70.240. Exemptions.

This Article shall not apply to:

(a) a religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society, which limits the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purposes to persons of the same religion, or which gives preference to such persons, unless membership in such a religion is restricted on account of race, color, sex or national origin;

(b) a private club not in fact open to the public, which, as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for

other than a commercial purpose, and which limits the rental or occupancy of such lodgings to its members or gives preference to its members;

(c) any single-family house sold or rented by an owner; provided, that such private individual owner does not own more than three (3) such single-family houses at any one time; provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this Subsection shall apply only with respect to one such sale within any twenty-four month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or served on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at any one time; provided further, that the sale or rental of any such single-family house shall be excepted from the application of this Article only if such house is sold or rented:

(1) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent or any such broker, agent, salesman or person; and

(2) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of the provisions of § 70.47 of this Code; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title; or

(d) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently

or each other, if the owner actually maintains and occupies one of such living quarters as his residence.

§ 70.250. Procedure.

Any person aggrieved by an unlawful practice prohibited by this Article may file a complaint with the Attorney General within thirty (30) days after the aggrieved person becomes aware of the alleged unlawful practice, and in no event shall exceed more than sixty (60) days after the alleged unlawful practice occurred. The Attorney General or his duly authorized representative shall investigate each complaint and attempt to resolve such complaint. Failure to achieve a resolution acceptable to both parties and in compliance with this Article shall cause the Attorney General to commence prosecution.

§ 70.260. Other Remedies.

Nothing herein contained shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled.

§ 70.270. Penalties.

Any person violating any provision of this Article shall, upon conviction thereof, be guilty of a misdemeanor.

ARTICLE 3

THE GUAM SOCIAL HOST ACT AND POSSESSION OF CANNABIS BY PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE

§ 70.310. Title.

This Article shall be known and may be cited as The Guam Social Host Act.

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

(a) No person twenty-one (21) years or older shall knowingly give or otherwise make available any alcoholic beverage or cannabis to a person under the age of twenty-one (21) years. A person violates this Section who gives or otherwise makes available an alcoholic beverage or cannabis to a person under the age of twenty-one

(21) with the knowledge that the person to whom the alcoholic beverage or cannabis is made available will violate this~~§ 70.53~~§ 70.320.

(b) A person violates this Section who owns, occupies, or controls premises on which alcoholic beverages or cannabis are consumed by any person under twenty-one (21) years of age, and who knows of alcohol or cannabis consumption by persons under twenty-one (21) years of age on such premises, and who reasonably could have prohibited or prevented such alcohol or cannabis consumption.

(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

(2) in addition to the sentence referenced in Subsection (c)(1) the court *may* require the violator to make restitution for any damages to property or a person caused by a violation of this ~~§ 70.53~~ § 70.320, and *may* require participation in volunteer service to a community service agency.

(d) The prohibitions of this Section apply only to a person who is present and in control of the location at the time the consumption occurs. The prohibitions of this Section do not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.

(e) This Section *shall not* apply to any religious practice, observance, or ceremony.

(f) The violations of this Section and the resulting penalties prescribed herein, supra, are in addition to other violations of public law related to alcoholic beverages or cannabis.

§ 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 ~~petty misdemeanor~~ violation 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~~.

ARTICLE 4

MISCELLANEOUS CRIMINAL OFFENSES

§ 70.410. Tattoos, Brands, Scarifications and Piercings; Minors; Violation; Classification; Anesthesia; Defense; Definition.

(a) It is unlawful to tattoo a person who is under eighteen (18) years of age without the physical presence of that person's parent or legal guardian.

(b) It is unlawful for a person who tattoos or pierces the body of another person to use a needle or ink more than once, or to use a needle that is not pre-sterilized or autoclaved.

(c) A person must be a licensed healthcare professional to administer any form of subcutaneous local anesthesia during the course of any procedure involving the branding, scarifying, tattooing or piercing of the body of another person.

(d) It is a defense to a prosecution for a violation of Subsection (a) that the person requested age identification, and relied in good faith on the accuracy of the information contained in the identification.

(e) A person who violates this Section is guilty of a misdemeanor.

(f) For the purposes of this Section, tattoo means any indelible design, letter, scroll, figure, symbol or other mark that is placed on or under the skin with ink or colors by the aid of needles or other instruments, and that cannot be removed without a surgical procedure or any design, letter, scroll, figure or symbol or other mark done by scarring on or under the skin.

§ 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 Pago 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.

~~**§ 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.~~

§ 70.440. Revealing Expunged Record Prohibited.

A person is guilty of a misdemeanor if he permits to be made public or reveals to any person not entitled to review it any official record of the court, Attorney General or any other entity of the government of Guam which has been expunged in accordance with § 271 of the Code of Civil Procedure or Chapter 11 of Title 8 GCA.

~~§ 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.~~

§ 70.460. Operation of Unmanned Aircraft Over Correctional or Detention

Facility.

(a) Definitions.

(1) "*Contraband*" means any item not provided by or authorized by the operator of a correctional facility or detention facility;

(2) "*Correctional Facility*" means a confinement facility at a prison operated by the Department of Corrections for the incarceration of convicted inmates;

(3) "*Detention Facility*" means a facility operated by the Department of Corrections for confinement of pretrial inmates, a facility operated by the Department of Youth Affairs for the confinement of juvenile offenders, a jail operated by the Guam Police Department for the confinement of persons arrested and/or are under criminal investigation, or a jail or similar holding facility for inmates and detainees operated by the Judiciary of Guam or other law enforcement entity of the government of Guam.

(4) "*Unmanned Aircraft*" means an unmanned aerial vehicle (UAV) or unmanned aircraft system (UAS), which can be flown, remotely-controlled, or fly autonomously through software-controlled flight plans in their embedded systems, working in conjunction with onboard sensors and GPS.

(b) Unlawful Use of Unmanned Aircraft. A person commits an offense of unlawful use of an unmanned aircraft, if the person intentionally or knowingly:

(1) operates an unmanned aircraft over a correctional facility or detention facility and the unmanned aircraft ~~in~~ is not higher than 400 feet above ground level;

(2) allows an unmanned aircraft to make contact with a correctional facility or detention facility, including any person or object on the premises of or within the facility; or

(3) allows an unmanned aircraft to come within a distance of a

correctional facility of or within the facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(c) Exemptions. This Section does not apply to conduct described by Subsection (b) that is committed by:

(1) the Federal government or the government of Guam;

(2) a person under contract with or otherwise acting under the direction or on behalf of the Federal government or the government of Guam;

(3) a person who has the prior written consent of the correctional facility or detention facility;

(4) a law enforcement agency recognized in the Peace Officer Standards and Training statute, 17 GCA Chapter 51; or

(5) a person who has the prior written consent of the law enforcement agency authorized by this Section.

(d) Offense Remedies. Whoever commits an offense of unlawful use of an unmanned aircraft as provided in this section is guilty of a misdemeanor and shall be fined an amount of not less than One Thousand Dollars ($1,000), which shall be deposited into the Corrections Revolving Fund for expenditures authorized by 9 GCA § 90.49, or imprisoned for not more than six (6) months, except that the offense is:

(1) a felony if the actor has previously been convicted under this Section; or

(2) a felony if, during the commission of the offense, the actor used the unmanned aircraft to:

(A) provide contraband to a person in custody of the correctional facility or detention facility; or

(B) otherwise introduces contraband into the correctional facility or detention facility.

Section 24. Chapter 71, Title 9, Guam Code Annotated, is hereby *repealed and reenacted in* its entirety as follows:

CHAPTER 71

THE GUAM GUN-FREE SCHOOL ZONE ACT OF 2004

§ 71.10. Title.

This Chapter shall be known, and may be cited, as "The Guam Gun-Free School Zone Act of 2004".

§ 71.20. Definitions.

As used in this Chapter, the following definitions shall apply:

(a) "School zone'' means an area in, or on the grounds of, a public or private school providing instruction in early childhood, kindergarten or grades 1 to 12, inclusive.

(b) "Firearm'' shall mean as defined in 10 GCA § 60100.

~~(c) "Concealed firearm'' shall mean as defined in 9 GCA § 60108(c).~~

§ 71.30. ~~Person Not Allowed to Possess Firearms~~ Possession of Firearms in a School Zone.

Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in ~~paragraph (a) of Subdivision~~ § 71.20(a) of this Chapter, shall be punished as specified in ~~Subdivision~~ § 71.60.

§ 71.40. Prohibition on Discharge of Firearm.

It shall be unlawful for any person to discharge, or attempt to discharge, a firearm in a school zone, as defined in ~~paragraph (a) of Subdivision~~ § 71.20(a) of this Chapter. The prohibition contained in this ~~Subdivision~~ Section does not apply to the discharge of a firearm if the firearm is discharged in an area that is designated as a shooting range at a University or College.

§ 71.50. Firearms Prohibited on University or College Property.

~~(a)~~ It shall be unlawful for any person to bring or possess a ~~loaded~~ firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority. Notwithstanding § 71.80, a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this Section.

~~(b) It shall be unlawful for any person to bring or possess a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority. Notwithstanding Section § 71.80, a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this Section.~~

§ 71.60. Punishment.

Any person who ~~violates~~ is convicted of violating § 71.30, § 71.40, or § 71.50 of this Act shall be guilty of a felony of the third degree and ~~any person who is convicted of an offense pursuant to § 71.30, § 71.40, or § 71.50~~ shall be sentenced as follows:

(a) For a first offense, the Court shall impose a sentence of imprisonment of no more than three (3) years, a fine of not less than One Thousand Dollars ($1,000.00), and mandatory community service of no less than one hundred and fifty (150) hours.

(b) In cases where the person has been convicted of felonies under any

provision of this Chapter, the person shall be sentenced to a term of imprisonment which shall not be less than five (5) years and in addition, may be fined not more than Fifteen Thousand Dollars ($15,000.00). The sentence~~, if for a term of years,~~ shall include a special parole term of not less than one (1) year in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended, and probation shall not be granted. Sentence in these cases must also include mandatory community service of no less than one hundred fifty (150) hours unless the term of imprisonment is for life.

(c) The Court shall apply any minimum sentence, fine or community service specified in this Section, except in unusual cases where the interests of justice would best be served ~~by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment, fine or community service required in this Subdivision or~~ by granting probation or suspending the execution or imposition of sentence, fine or community service with conditions other than those set forth in this Section, in which case the Court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

§ 71.61. Information for Sentencing.

Except as otherwise provided in 9 GCA Chapter 80 ~~of Title 9 of the Guam Code Annotated~~, no limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which the Superior Court of Guam may receive and consider for the purpose of imposing an appropriate sentence under this Chapter.

~~**§ 71.70. What Constitutes a Loaded Firearm.**~~

~~For purposes of this Chapter, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including,~~

~~but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.~~

§ ~~71.80~~ 71.70. Notice.

~~(a)~~ The Department of Education and other entities covered by this Chapter shall post permanent signs with large visible lettering stating at a minimum, "Warning this is a Gun-Free Zone'' at the main entrances of the covered facilities within their control ~~on or before January 1, 2005~~. This Section does not require that notice be posted regarding the proscribed conduct for the purposes of prosecution of any violation of this Act.

~~(b) The Guam Police Department within sixty (60) days of the effective date of this Act shall implement a public relations campaign to inform the general public of its provisions.~~

§ ~~71.81~~ 71.80. Chapter Not Applicable ~~to Peace Officers and Military~~.

(a) This Chapter does not apply to a duly appointed peace officer as defined in 8 GCA § 5.55, ~~Article 2, Chapter 5, Title 8, Guam Code Annotated,~~ a full-time paid peace officer of another state or the Federal government who is carrying out official duties while in Guam, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of Guam or of the United States who is engaged in the performance of his or her duties, or an armored vehicle guard engaged in the performance of his or her duties.

~~§ 71.82. Not Applicable to Security Guards.~~

(b) This Chapter does not apply to an on-duty security guard authorized to carry a loaded firearm, provided the security guard is an employee of an entity contracted by the school for security purposes.

~~§ 71.83. Not Applicable to Existing Shooting Ranges.~~

(c) This Chapter does not apply to an existing shooting range at a public or private school or university or college campus.

§ 71.90. Severability.

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

Section 25. The Compiler of Laws is authorized to remove reference to Chapter 86 in Title 9, Guam Code Annotated, pursuant to the authority granted in 1 GCA Chapter 16.

CHAPTER 86

~~**COMPENSATION FOR DAMAGES FROM CRIMINAL ACTIVITIES**~~

~~**NOTE:** This Chapter was added by P.L. 20-155:2 (Mar. 21, 1990); amended and moved by P.L. 27-138:4 (Dec. 30, 2004) to Chapter 161, Title 8, Guam Code Annotated.~~

Section 26. The Compiler of Laws is authorized to remove reference to Chapter 87 in Title 9, Guam Code Annotated, pursuant to the authority granted in 1 GCA Chapter 16.

CHAPTER 87

~~**VICTIM NOTIFICATION**~~

~~**NOTE:** This Chapter was enacted by P.L. 20-155:1 (Mar. 21, 1990) as Chapter 85. Since Chapter 85 was occupied, renumbered and codified by Compiler as Chapter 87. Repealed in its entirety by P.L. 27-138:3 (Dec. 30, 2004).~~

Section 27. Chapter 90, Title 9, Guam Code Annotated, is hereby *repealed and reenacted* in its entirety as follows, and Article 3 of this Chapter, regarding the Interstate Compact on Juveniles, may be moved by the Compiler of

Laws, pursuant to the authority granted in 1 GCA Chapter 16, to 19 GCA Chapter 20 regarding the Department of Youth Affairs.

CHAPTER 90
CORRECTIONS
ARTICLE 1
DEPARTMENT OF CORRECTIONS

§ 90.10. Definitions.

As used in this Chapter:

(a) Director means the Director of Corrections.

(b) Department means the Department of Corrections.

(c) Detainee means a person temporarily committed to the custody of the Director, including but not limited to commitment due to pretrial status, federal hold, probation violation, or parole violation.

(d) Inmate means a person committed to the custody of the Director post-adjudication, after imposition of a sentence to a term of imprisonment.

(e) Prisoner means a person committed to the custody of the Director as a detainee or inmate.

§ 90.15. ~~General Duties of Department of Corrections.~~ Mission Statement.

~~The Department shall protect the public from the destructive action of law offenders through control and rehabilitation. It shall provide staff services for the judiciary, the Parole Board, probation officers and interested agencies of the Executive Branch.~~

To promote public safety through custody and control of criminal offenders while providing a safe and humane environment for their treatment, rehabilitation, and reintegration back into the community as productive citizens.

§ 90.16. Minimum Qualifications for Department of Corrections Officers.

(a) Notwithstanding other provisions of law to the contrary, persons appointed as Corrections Officer *shall*: ~~:~~ meet the qualifications for employment as a peace officer as defined by the Peace Officer Standards and Training Commission in 17 GCA § 51104 and applicable rules and regulations.

~~(1) be a resident of Guam and a U.S. citizen;~~

~~(2) be of good health and good moral character;~~

~~(3) be over the age of eighteen (18) years;~~

~~(4) be a high school graduate *or* equivalent, but the POST Commission may set higher academic qualifications for all applicants as the Commission considers necessary;~~

~~(5) submit to and pass a drug screening test, including, but *not* limited to, a urinalysis test;~~

~~(6) submit to psychological testing; and~~

~~(7) submit to a polygraph examination.~~

~~(b) No person shall be appointed as a Corrections Officer who has *not* established satisfactory evidence of qualifications by passing a physical examination, which *shall* include a physical agility test, and written examinations based upon standards relevant to the duties to be performed, which standards *shall* be established by the Director of Corrections in conjunction with the Department of Administration.~~

~~(c) No person shall be appointed as a Corrections Officer who has been convicted in any civilian or military court of a felony, a crime involving moral turpitude, a crime of domestic or family violence, or who has been administratively pardoned of any crime.~~

~~(d) No person shall be appointed as a Corrections Officer before a thorough investigation of the applicant's background and moral character is completed.~~

~~(e)~~ (b) A Corrections Officer dismissed for cause *shall* be permanently ineligible for appointment ~~reappointment~~, or reemployment to any position in the Department.

A Corrections Officer who resigns for the sole purpose of negating or averting a pending or anticipated disciplinary action to dismiss the Corrections Officer *shall* be ineligible for reappointment or reemployment.

~~(f) No person shall be appointed as a Corrections Officer who has *not* established satisfactory evidence of the ability to understand and work with persons with disabilities, including special needs and mental illness. Evidence of such ability *shall* be by a certificate of completion of the appropriate training as approved by the Department of Integrated Services for Individuals with Disabilities, as a condition for selection prior to appointment as a Corrections Officer. For the purpose of this Section, the term disability(ies), as is defined in the *Americans with Disabilities Act*, *shall* mean a physical or mental impairment that substantially limits one (1) or more major life activities of an individual. Incumbent uniformed officers who *do not* have a certificate of completion of the training as required in this Act *shall*, within six (6) months following the enactment of this Act, submit to the Department of Administration such certification as required herein.~~

§ 90.16.1. Annual Corrections Officer Recruits Training Cycle.

~~(a)~~ The Department of Corrections shall conduct a corrections officer recruits training cycle for at least twenty (20) candidates per fiscal year, subject to the availability of funds.

~~(b) Each year, the Director of the Department of Corrections shall determine the total cost to conduct a recruitment and training cycle pursuant to the requirements set forth in Subsection (a) of this Section and he/she shall transmit this as part of the Department's proposed budget to *I Maga'hagan Guahan* for inclusion in the Executive Budget request that *I Maga'hagan Guahan* submits annually to *I Liheslaturan Guahan*.~~

~~(c) The Director of the Department of Corrections shall submit a report to *I Maga'hagan Guahan* and the Speaker of *I Liheslaturan Guahan* no later than June~~

~~30 of each year to present an update on the corrections officer recruits training cycle conducted during that fiscal year pursuant to the requirements set forth in this Section.~~

~~§ 90.20. Corrections Advisory Council Established.~~

~~There is hereby the established Corrections Advisory Council, composed of the Chairman of the Guam Parole Board, the Chief Judge of the Superior Court, the Administrator of Social Services (Director, Public Health and Social Services) or his designee, the Principal of the Vocational & Technical High School or his representative, the United States Attorney or his representative and, in addition, one (1) representative from the business community and one (1) member of the general public, who shall be appointed by the Governor with the advice and consent of the Legislature. The Director of the Department shall be ex officio secretary of the Council and the Department shall furnish necessary logistic support. The Council shall advice the Director and the Department as to the policies and procedures to carry out the intent and purposes of this Chapter.~~

§ 90.25. General Powers and Duties of Director ~~to Establish Prisons~~.

(a) The Director shall establish and operate correctional institutions, and other places of confinement, for inmates and detainees ~~for prisoners serving sentences of imprisonment imposed by the Courts of Guam and other authorized prisoners, and other persons placed in the custody of the Director, pursuant to the laws of Guam~~.

(b) As head of the Department, the Director shall administer the Department, and:

(1) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law.

(2) May establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and

operation of the Department. Each such division or organizational unit shall be subject to the supervision and discretion of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.

(3) May delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.

(4) Shall, when the need arises to use correctional facilities to serve as overflow lock-up, keep inmates and detainees separate and apart.

(c) The Director shall have the authority to promulgate, adopt, and amend rules and regulations in accordance with the Administrative Adjudication Law (codified at Chapter 9 of Title 5, Guam Code Annotated) necessary to implement this Chapter and for the administration of the Department.

(d) The Director of the Department of Corrections must make reasonable efforts:

(1) to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.

(2) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is not a threat to the infant's and the public's safety and welfare.

§ 90.26. 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 a 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 1, 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.

~~**§ 90.27. Prison May Serve as Overflow Lock-Up.**~~

~~In the event that a court of competent jurisdiction finds that a facility used to detain persons charged with a crime is inadequate, the court may direct the Director to hold such persons in his custody. Such person shall be detained in an area separate and apart from those persons who have been convicted of a crime and are serving sentences of imprisonment.~~

~~**§ 90.30. Rules, Regulations & Disciplinary Rules Authorized.**~~

~~The Director subject to the approval of the Governor by Executive Order, is authorized to make rules and regulations for the administration of correctional~~

~~institutions and other places of confinement, including, but not limited to, necessary disciplinary measures for inmates thereof and for their treatment, care, labor, rehabilitation and reformation.~~

~~§ 90.35. Director to Control Organization of DOC; Appoint Staff.~~

~~(a) The Director may establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and discretion of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.~~

~~(b) The Director may appoint and rename officers and other employees within the Department in accordance with the provisions of Title 4 of the Guam Code Annotated.~~

~~(c) The Director may delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.~~

~~§ 90.40. General Duties of Director of Corrections.~~

~~As head of the Department, the Director:~~

~~(a) Shall administer the Department.~~

~~(b) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law.~~

~~(c) May formulate and adopt rules necessary or proper for the internal administration of the Department, subject to the approval of the Governor.~~

§ 90.41. ~~Inmate~~ Commissary.

~~Notwithstanding any other provision of law, the~~ The Department ~~of Corrections (DOC)~~ is authorized to operate or outsource the operation of ~~an inmate~~ a commissary within the confines of DOC. This Section *shall* exempt DOC from the provisions of

21 GCA § 60112 in order to provide DOC the authority to lease property to an approved vendor to operate the commissary facility without first seeking legislative approval.

§ 90.42. Operation of ~~Inmate~~ Commissary.

(a) The Director ~~of DOC~~ may operate, or contract with another person or entity to operate, a commissary for the use of the inmates and detainees confined at DOC.

(b) The Director may enter into a contract for the lease of space to accommodate the commissary. ~~In accordance with 5 GCA Chapter 5 (Guam Procurement Law), the Department of Corrections is authorized to enter into a contract for the lease of up to three hundred (300) square feet of its property for an inmate commissary. Procurement of said contract *shall* be done by a DOC staff member who is qualified under 5 GCA § 5141.~~

~~(c) Funds directed as a result of revenue received from the contract under Subsection (b) of this Section *shall* be subject to an annual audit by the Office of Public Accountability.~~

~~(d) When entering into a contract under Subsection (a) of this Section, the Director or the Director's designee *shall* consider the following:~~

~~(1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;~~

~~(2) the menu items offered by the provider and the price of those items;~~

~~(3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;~~

~~(4) safety and security procedures to be performed by the provider; and~~

~~(5) the performance record of the provider, including service availability, reliability, and efficiency.~~

~~(e) The Department of Corrections *shall* establish policy and procedures for the administration of this Section. Such policy and procedures *shall* be transmitted to *I Liheslaturan Guåhan* prior to operation of the inmate commissary.~~

~~(f) The Department of Corrections *shall* establish rules and regulations for the administration of this Section prior to operation of the inmate commissary.~~

~~§ 90.43. Corrections Commissary Fund.~~

~~(a)~~(c) Corrections Commissary Fund. There is hereby established a Fund to be known as the Corrections Commissary Fund (CCF), which *shall* be maintained separate and apart from other funds of the government of Guam. All funds collected by the government of Guam from the operations of a commissary *shall* be deposited in the CCF; and, interest and investment earnings *shall* be credited to the assets of the CCF and *shall* become part of the CCF. ~~Any remaining balance in the CCF at the end of the fiscal year *shall* be carried over to the next fiscal year.~~

~~(b)~~(d) ~~Inmate Improvement.~~ The Director may use ~~up to fifty percent (50%) of~~ the net proceeds of the CCF for inmate and detainee improvement. ~~to develop or enhance inmate welfare; and the other fifty percent (50%) *shall* be used for rehabilitation programs within the Department of Corrections.~~

§ 90.44. ~~Inmate~~ Phone Access Act of 2021.

(a) There is hereby created, within the Department of Corrections, a revolving fund called the "Inmate Phone Access Fund" (Fund), which shall be established by the Department of Administration in accordance with the following provisions:

(1) Notwithstanding any other provision of law, any revenue that is collected by the Government of Guam for telephone services within the Guam Department of Corrections shall be deposited into said Fund.

(2) Any revenue that is deposited into said Fund is to be used to provide no-cost telephonic services for indigent inmates or indigent detainees to contact their legal counsel.

(3) Should revenues deposited into this Fund not be adequate to provide no-cost telephonic services for indigent inmates to contact their legal counsel, the Director of the Department of Corrections and I Maga'hågan Guåhan shall ensure that any indigent inmate or indigent detainee be provided with their constitutional right to consult legal counsel through no-cost telephonic service by any means that the Director or I Maga'hågan Guåhan sees fit.

(4) For the purposes of this Section, "indigent inmates" or "indigent detainees" shall mean those persons charged in a criminal case before the courts of Guam who are determined indigent consistent with 12 GCA § 11104.

~~(b) Notwithstanding any other provision of law, within thirty (30) days of the enactment of this Section, the Director of the Department of Corrections shall create and implement a policy where indigent inmates shall be allowed to call the Public Defender Service Corporation, the Alternate Public Defender, or their Attorney of Record, at no cost to the indigent inmate. The Director of the Department of Corrections shall submit a report to *I Liheslatura* upon the creation and implementation of said policy.~~

§ 90.45. Authorization to Transfer ~~Prisoners~~ Inmates to Federal Correctional Institutions.

The Director is authorized to enter into one or more contracts with the Attorney General of the United States pursuant to the authority granted to the Attorney General of the United States by Title 18, United States Code, § 5003, for the custody, care, subsistence, education, treatment and training in one or more Federal correctional institutions, of persons convicted of criminal offenses in the courts of Guam; provided, that any such contract shall provide for the reimbursement of the United States in full for all costs or other expenses incurred by the United States for such custody, care, subsistence, education, treatment and training; and provided further, that the Director shall comply with the relevant provisions of §§ 90.46

through 90.48 inclusive of this Code prior to the physical transfer of any such person to a Federal correctional institution.

§ 90.46. Emergency Transfers of Inmates.

(a) Existence of correctional emergency. The Director may declare a correctional emergency under the following circumstances:

(1) When the Director determines the existence of conditions which have affected, or in the immediate future will affect, the physical integrity of any correctional institution over which he has jurisdiction or the health or safety of the inmates thereof; and

(2) The effect of such conditions will, in the Director's opinion, be to render such institution unable to provide secure custody and proper care for the inmates thereof. The term 'conditions' as used hereinabove includes, although it is not limited to fire, earthquake, explosion, typhoon, flood, other acts of God and calamitous events and diseases, but it shall not include riot, insurrection or any other disturbance created by the inmates of such institution.

(b) Procedure for Declaration. Whenever the Director determines the existence of a correctional emergency as defined hereinabove, he shall make and execute a short, plain written statement setting forth the nature of such emergency and the basis for his opinion that such emergency will render such institution unable to provide secure custody and proper care for the inmates thereof. Such statement shall be filed in the permanent records of the Department as soon after its execution as is practicable. Copies of such statement shall be delivered to the Parole Board and to the Office of the Attorney General within five (5) calendar days after its execution by the Director.

(c) Transfer of Inmates. Following the declaration of a correctional emergency as provided for hereinabove, the Director may, without further delay, enter into one or more contracts such as those contemplated by §§ 90.45 of this Code or by Article

III of the Western Interstate Corrections Compact (§ 90.52 of this Code), and he may thereafter transfer an inmate or inmates of the correctional institution for which such correctional emergency was declared to another correctional institution without any further administrative proceedings; provided, however, that any transfer of an inmate or inmates under conditions of correctional emergency shall be to a correctional institution within Guam, if such then exists and then has the capability of providing secure custody and proper care to such inmate or inmates, and that no inmate shall be transferred to a correctional institution outside of Guam under conditions of correctional emergency unless no correctional institution then existing within Guam then has the capability of providing secure custody and proper care to such inmate.

(d) Termination of Correctional Emergency. Whenever the Director determines that the conditions which necessitated the declaration of a correctional emergency no longer have the effect of rendering the correctional institution unable to provide secure custody and proper care for the inmates thereof, the Director shall declare the termination of such correctional emergency. Such declaration shall be in writing and executed by the Director and shall be filed and delivered as set forth in Subsection (b) of this Section. Such termination shall be effective immediately upon its execution.

(e) Return of Inmates. Upon the termination of a correctional emergency, all inmates who were transferred under the provisions of Subsection (c) of this Section shall immediately be returned to the correctional institution from which they were transferred, at the Department's expense.

§ 90.47. ~~Inmate Transfer:~~ Non-Emergency Transfers of Inmates.

The Director ~~of Corrections~~ is authorized to transfer an inmate to a correctional institution outside of Guam in non-emergency circumstances.

§ 90.47.01. ~~Same:~~ Disciplinary Transfers of Inmates.

The Director may recommend the transfer of an inmate to an institution outside of Guam for disciplinary reasons in the following circumstances:

(a) when an inmate is alleged by an officer, employee or other inmate to have committed a violation of such institution's rules or regulations, which violation might constitute a threat to the order or discipline of the institution or to the ~~physical~~ safety of an officer, employee or any inmate; or harm to the public; or

(b) when an inmate is subsequently convicted of a violation of § 58.20 or § 58.30 of this Code~~, or of any violent crime~~.

§ 90.47.02. ~~Same:~~ Non-disciplinary Transfers of Inmates.

The Director may recommend the transfer of an inmate to an institution outside of Guam for non-disciplinary circumstances under either of the following circumstances:

(a) whenever the Director determines that, due to the physical or mental condition of an inmate, the present incarceration lacks adequate facilities for custody, care, subsistence, education, treatment or training of the inmate, and that of the inmate would be better served by transfer to an institution outside of Guam; or

(b) whenever the Director determines that due to overcrowding which impacts on the adequacy of the facility to provide for the safe custody, care, subsistence, education, treatment and training of an inmate the interest of the inmate is better served by such transfer to an institution outside Guam.

§ 90.47.03. ~~Same:~~ Procedures for Transfers of Inmates.

Whenever the Director ~~of the Department of Corrections~~ determines that an inmate be recommended for transfer to a correctional institute outside of Guam, the Director shall ~~convene a Transfer Review Committee to~~ review the basis for such recommended transfer. The Director shall ~~promulgate~~ provide ~~through Executive~~

~~Order rules and regulations for the establishment of a Transfer Review Committee to include:~~

~~(a) a minimum of five (5) members to include a DOC case worker, the Attorney General or representative, a correctional officer, an inmate, a member of the clergy;~~

~~(b) provisions~~ for due notice on a recommended transfer, which shall include timely notice to the inmate and the Attorney General; and

~~(c) provisions~~ for hearing, final decision and appeal from a final decision of transfer~~;~~ .

~~(d) provisions for maintaining~~ The Director shall maintain a record of each hearing.

~~§ 90.47.04. Same: Basis of Determination.~~

~~(a) The Transfer Review Committee shall base its determination for transfer upon substantial evidence as presented on the record at hearing, and shall be final. No inmate shall be recommended for transfer while any conviction for which he was incarcerated is on appeal. Any statement made by an inmate during the course of a transfer hearing shall not be admitted in evidence against the inmate in any subsequent criminal action, except for the purpose of impeachment or in a trial for perjury, false swearing or contempt.~~

~~(b) The Administrative Adjudication Law and the Open Government Law shall not apply to any proceeding or action taken under this Section, nor shall any inmate be represented by counsel in any proceeding held pursuant to this Section.~~

~~§ 90.47.05.Same: Appeal from Determination.~~

~~Any inmate whom the Transfer Review Committee has determined is to be transferred under these provisions may appeal such determination to the Superior Court of Guam. The review of the Superior Court shall not be de novo, and shall be limited to a review of the record to determine whether the Transfer Review~~

~~Committee made its determination based upon a fair and full hearing. A determination may be reversed only upon a showing that the Committee abused its discretion in applying the rules and regulations to the facts which provided the basis for the recommended transfer, and that to allow the decision to stand would result in a miscarriage of justice. Notice of filing an appeal in accordance with this Subsection does not automatically stay an inmates transfer pending appeal.~~

~~§ 90.48. Nursing Mothers-Accommodations.~~

~~(a) The Director of the Department of Corrections must make reasonable efforts to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.~~

~~(b) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is *not* a threat to the infant's and the public's safety and welfare.~~

§ 90.48. Transfers Pursuant to Treaty.

When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, I Maga'lahen Guåhan (the Governor of Guam) or the Director of the Department of Corrections, if designated by I Maga'lahi (the Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. I Maga'lahen Guåhan (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.

§ 90.49. Corrections Revolving Fund.

There is hereby created, within the Department of Corrections, a revolving fund called the 'Corrections Revolving Fund', which shall be established by the Department of Administration in accordance with the following provisions:

(a) All funds collected from the U.S. Marshal Service, the U.S. Immigration Service and the U.S. Bureau of Prisons for housing U.S. ~~prisoners~~ inmates and detainees, confinement of military personnel as agreed to in a Memorandum of Agreement between the United States Air Force and the Department of Corrections dated March 5, 2003, employees of the Department of Corrections for meals they purchase at the Department's dining facility, and the sale of hot garbage (pig slop) to private persons, shall be deposited into said Fund.

(1) Funds in the Corrections Revolving Fund may be used to purchase clothing for ~~prisoners~~ inmates and detainees, foodstuffs for the dining facility, galley catering services and, equipment, medical/dental supplies, reading glasses, prescription and over-the-counter medicines, sanitary/ hygiene supplies, and other pharmaceutical supplies for ~~prisoners~~ inmates and detainees, including payment for ~~prisoners~~ inmates and detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs and for ~~DepCor~~ Department of Correction Reservists.

(2) Expenditures from the Fund shall be approved by the Director ~~of Corrections~~ and posted on the Department's website.

(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund shall be maintained by the Director of Administration.

(4) Such accounting shall include and clearly identify the sources and amounts of all funds paid into or withdrawn from said Fund.

(b) The Corrections Revolving Fund shall be maintained separate and apart from all other funds of the government of Guam.

~~(c) *No* expenditures and encumbrances from the Corrections Revolving Fund shall be made without legislative approval through appropriation.~~

ARTICLE 2

WESTERN INTERSTATE CORRECTIONS COMPACT

§ 90.50. Purpose of Article.

The purpose of this Article is to enact enabling legislation for the enactment of the Western Interstate Corrections Compact, hereinafter referred to as the Compact. This Article may be cited as the Western Interstate Corrections Compact Enabling Act.

§ 90.51. Compliance Prior to Transfer~~to §§ 90.46-90.48~~.

No person shall be transferred to a correctional institution outside of Guam unless the applicable provisions of §§ 90.46, 90.47, 90.47.01, 90.47.02 or 90.47.03~~90.48~~ of this ~~Code~~ Chapter have first been complied with or unless such person has been legally sentenced to a term of imprisonment in such a correctional institution.

§ 90.52. Compact Stated.

The Compact as contained herein is hereby enacted into law and entered into on behalf of Guam with any and all states legally joining therein in a form substantially as follows:

Western Interstate Corrections Compact

Article I

Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently, high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy

of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this Compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

Article II

Definitions

As used in this Compact, unless the context clearly requires otherwise:

(a) *State* means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) *Sending State* means a state party to this Compact in which conviction was had.

(c) *Receiving State* means a state party to this Compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) *Inmate* means a male or female offender who is under sentence to, or confined in, a prison or other correctional institution.

(e) *Institution* means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III

Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation

in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(3) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(4) Delivery and retaking of inmates.

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract herewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity, or provision, of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or installments as provided in the contract.

(c) The terms and provisions of this Compact shall be a part of any contract entered into by the authority of, or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV

Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this Compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the Territory of another party state is necessary in order to provide adequate quarters

and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the Territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this Compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of the sending state in institutions pursuant to this Com pact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall

not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any all proceedings had pursuant to the provisions of this Subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this Subdivision shall be borne by the sending state.

(g) An inmate confined pursuant to this Compact shall be released within the Territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its Territory.

(h) Any inmate confined pursuant to the terms of this Compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any

inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this Compact.

Article V

Acts Not Reviewable in Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this Compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this Compact through any and all states party to this Compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this Compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escape.

Article VI

Federal Aid

Any state party to this Compact may accept Federal aid for use in connection with any institution or program, the use of which is or may be affected by this Compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this Compact may participate in any such Federally aided program or activity for

which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

Article VII

Entry Into Force

This Compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this Article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington, and to Guam. Thereafter, this Compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this Compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this Article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

Article VIII

Withdrawal and Termination

This Compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the Compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective

date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its Territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this Compact.

Article IX

Other Arrangements Unaffected

Nothing contained in this Compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state of the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X

Construction and Severability

The preceding shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ 90.54. Director, Department of Corrections May Commit ~~Prisoner~~ Inmate Outside of Guam Pursuant to Terms of Compact.

The Director of Corrections may commit or transfer any inmate of a penal institution under his responsibility to any institution without Guam if Guam has entered into a contract or contracts for the confinement of inmates in such institution pursuant to Article III of the Compact.

§ 90.56. All Agencies of Government of Guam Shall Enforce Compact.

The courts, departments, agencies and officers of Guam shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the Compact.

§ 90.58. Director, Department of Corrections May Hold Hearings as Required by Compact.

The Director of Corrections is hereby authorized and directed to hold such hearings as may be requested by any party state pursuant to Article IV(f) of the Compact.

§ 90.60. Governor May Contract to Implement Compact.

The Governor is hereby empowered to enter into such contracts as may be appropriate to implement the participation of the territory of Guam in the Compact pursuant to Article III thereof.

§ 90.62. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.

Where the inmate of an institution within Guam is committed or transferred to any institution outside Guam pursuant to § 90.54, and if such inmate is discharged in the receiving state by agreement pursuant to Article IV(g) of the Compact, where such inmate is a permanent resident of Guam the return transportation of such inmate to Guam shall be furnished by Guam.

§ 90.64. Severability.

The provisions of this Article shall be severable and if any phrase, clause, sentence, or provision of the Article is declared to be invalid or the applicability thereof to any state, agency, person or circumstances is held invalid, the validity of this Article and the applicability thereof to any other state, agency, person or circumstance shall with respect to all severable matters, not be affected thereby. It is

the legislative intent that the provisions of this Article be reasonably and liberally construed.

§ 90.66. Effective Date.

This Article shall become effective upon the enactment of consent legislation by the United States Congress in accordance with Article VII of the Compact.

~~**ARTICLE 3**~~

~~**INTERSTATE COMPACT ON JUVENILES**~~

~~**§ 90.80. Purpose of Article: Title.**~~

~~The purpose of this Article is to enact enabling legislation for the Interstate Compact on Juveniles, hereinafter referred to as the Compact. This Article may be cited as the Interstate Compact on Juveniles Enabling Act.~~

~~**§ 90.82. Governor to Execute Compact: Compact Stated.**~~

~~The Governor of Guam is hereby authorized to execute and enter into a Compact on behalf of t Guam with any and all states, territories, Trust Territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico legally joined therein in a form substantially as follows:~~

~~Article I~~

~~Finding and Purposes~~

~~That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states~~

may find desirable to undertake cooperatively. In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II

Existing Rights and Remedies

That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III

Definitions

That, for the purposes of this Compact:

(a) *delinquent juvenile* means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court;

(b) *Probation or parole* means any kind of conditional release of juveniles authorized under the laws of the states party hereto;

(c) *Court* means any court having jurisdiction over delinquent, neglected or dependent children.

(d) *State* means any state, territory, and Trust Territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(e) *Residence or any variant thereof* means a place at which a home a regular place of abode is maintained.

Article IV

Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate; and shall be accompanied by two (2) certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardian ship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made shall hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, after a hearing, that the juvenile should be returned, he shall present to the appropriate court

~~or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent or a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provision of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue and order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who shall appoint counsel or guardian and litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such juvenile over the officer whom the court demanding him shall have appointed to receive him. The judge, however may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who shall appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state; or if he is suspended of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the law of that state.~~

~~(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation cost of such return.~~

~~(c) That juvenile as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.~~

~~Article V~~

~~Return of Escapes and Absconders~~

~~(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by the affidavit, shall be executed in duplicate, and shall be accompanied by two (2) certified copies of judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. The delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the~~

demand made for his return and who shall appoint counsel or guardian and litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, such person may be taken into custody in any other state party to his Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, at will enable his detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without

~~interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.~~

~~(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation cost of such return.~~

~~Article VI~~

~~Voluntary Return Procedure~~

~~That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without requisition in another state party to this Compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state to which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return; and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy**

of such court order; in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII

Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called 'receiving state') while on probation or parole and the receiving state shall accept such delinquent juvenile if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigation as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in it discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such

~~a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but, if at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.~~

~~(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.~~

~~Article VIII~~

~~Responsibility for Costs~~

~~(a) That the provisions of Articles IV (b), V (b), and VII (d) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.~~

~~(b) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this Compact.~~

~~Article IX~~

~~Detention Practices~~

~~That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lock-up nor be detained or transported in association with criminal, vicious or dissolute persons.~~

~~Article X~~

~~Supplementary Agreements~~

~~That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the~~

~~state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to this being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating state.~~

~~Article XI~~

~~Acceptance of Federal and Other Aids~~

~~That any state party to this Compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this Compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.~~

~~Article XII~~

~~Compact Administrators~~

~~That the Chief Judge of the Superior Court of Guam shall be the Compact Administrator and who, acting jointly with like officers of other states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.~~

~~Article XIII~~

~~Execution of Compact~~

~~That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it~~

~~shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.~~

~~Article XIV~~

~~Renunciation~~

~~That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six (6) months' notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereto shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six (6) months' renunciation notice of the present Article.~~

~~Article XV~~

~~Severability~~

~~That the provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters.~~

~~Article XVI~~

~~Out-of-State Confinement~~

~~(a) This Article, known as the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, is hereby enacted into law and entered into by this~~

~~Territory with all other states legally joining therein the form substantially as follows:~~

~~(1) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the Territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.~~

~~(2) Escapees and absconders who could otherwise be returned pursuant to Article V of the Compact may be confined or reconfined in the receiving state pursuant to this Article. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such Article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this Paragraph preliminary to disposition of the escapee or absconder.~~

~~(3) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this Article shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.~~

~~(4) As used in this Article: (1) sending state means sending state as the term is used in Article VII of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the Compact; (2) receiving state means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this Article.~~

~~(5) Every state which adopts this Article shall designate at least one of its institutions for delinquent juveniles as a Compact Institution and shall confine~~

~~persons therein as provided in Paragraph (a) hereof unless the sending and receiving state in question shall make specific contractual arrangement to the contrary. All states party to this Article shall have access to Compact Institutions at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.~~

~~(6) Persons confined in "Compact Institutions" pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said ACompact Institution@ for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.~~

~~(7) All persons who may be confined in a "Compact Institution" pursuant to the provisions of this Article shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this Article be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.~~

~~(8) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses~~

~~by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this Compact may enter into supplementary agreements determining a different allocation of costs as among themselves.~~

~~(A) Rules and regulations necessary to effectuate the terms of this Article may be promulgated by the appropriate officers of those states which have enacted this Article.~~

~~(B) In addition to any institution in which the authorities of this Territory may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to this Article, confine or order the confinement of a delinquent juvenile in a Compact Institution within another party state.~~

~~§ 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.~~

~~Pursuant to the Compact the Presiding Judge of the Superior Court shall be the Compact Administrator and shall promulgate rules and regulations to carry out the terms of the Compact. The Compact Administrator may enter into agreements with appropriate officials of other states or territories pursuant to the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of Guam in facilitating the proper administration of the Compact or of any agreements entered into by Guam thereunder.~~

ARTICLE 4

PRISON INDUSTRIES

§ 90.90. Prison Industries.

~~(a) Prison Industries, Established.~~ The Department ~~of Corrections~~ is hereby authorized to establish such prison industries as may be feasible to provide a means for inmates and detainees to receive job training and skills development; to provide opportunities for the earning of wages to be used to pay restitution to victims of crime, and payment of fines and court costs; and to provide additional means for

funding certain recurring expenses of the Department. The Department *shall* separate and designate each prison industry to be established as occurring "within the secured perimeter" or occurring "outside the secured perimeter." This Act is *not* meant to replace the activities authorized by Chapter 84 of Article 1, Title 9, Guam Code Annotated, but *shall* be viewed as authorizing additional activities. This Chapter *shall not* supersede, *nor* affect any programs undertaken pursuant to Chapter 81 of this Title.

~~(b) Role of Corrections Advisory Council. The Corrections Advisory Council *shall* advise the Department on the suitability of any industry to be established, and may assist the Department in other matters relative to the establishment, operation, and maintenance of a chosen industry.~~

~~(c) Earnings Formula, established. Inmates shall be paid at no less than local prevailing wage rates as determined by the Director of Labor. Each inmate participating in a prison industry shall have all wages earned subject to this Earnings Formula:~~

~~(1) Twenty-five percent (25%) to the Criminal Injuries Compensation Fund.~~

~~(2) Twenty-five percent (25%) to payment of court-ordered fines, fees, and restitution. When such court-ordered fines, fees, and restitution have been satisfied, this percentage shall be applied to the Inmate's Account.~~

~~(3) Twenty-five percent (25%) to the Prison Industries Revolving Fund.~~

~~(4) Twenty-five percent (25%) to the Inmate's Account. Each participating inmate may elect to provide up to one hundred percent (100%) of the twenty-five percent (25%) for child and spousal support.~~

~~(5) In the event that the participating inmate does not owe any sum listed above, one hundred percent (100%) of earned wages shall be placed in the Inmate's Account.~~

~~(d) Eligibility to Participate. The Department *shall* establish criteria for determining an inmate's eligibility for participation in an established prison industry. All inmates shall be eligible for participation in an established prison industry consistent with eligibility requirements for other in-house prison rehabilitation programs unless otherwise ordered by a Court.~~

~~(e) In-kind Contributions and/or Credit for Services Allowed. The Department is authorized to enter into agreements with other government of Guam entities to receive in-kind contributions and/or a credit for services rendered in lieu of cash payments.~~

~~(f) Authority to Bid Granted. Notwithstanding the provisions of § 84.10(c) of Chapter 84, Article 1 of Title 9, Guam Code Annotated, the Department may submit its bid for the provision of services to a non-government entity, provided, that it includes as a component of its bid the costs for housing, utilities, food, supplies and any other item that would normally be considered as part of the overhead costs.~~

§ 90.91. Prison Industries Revolving Fund.

(a) There is hereby created, within the Department ~~of Corrections~~, a revolving fund called the "Prison Industries Revolving Fund" (Fund), which *shall* be established by the Department of Administration ~~in accordance with the following provisions:~~.

~~(b) All funds collected from § 90.90(c) *shall* be deposited into said Fund.~~

~~(1) Funds in the Prison Industries Revolving Fund may be used to purchase clothing for prisoners and detainees, foodstuffs for the dining facility, galley catering services and equipment, medical/dental supplies, prescription and over-the-counter medicines, sanitary/hygiene supplies and other pharmaceutical supplies for prisoners and detainees, including, payment for prisoner-detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs for personnel specifically assigned to tasks~~

~~involving Prison Industries, and for training of Department of Corrections personnel.~~

~~(2) Expenditures from the Fund *shall* be approved by the Director of Corrections and posted on the Department's website.~~

~~(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund *shall* be maintained by the Director of Administration.~~

~~(4) Such accounting *shall* include and clearly identify the sources and amounts of all funds paid into *or* withdrawn from said Fund.~~

~~(c) The Prison Industries Revolving Fund *shall* be maintained separate and apart from all other funds of the government of Guam.~~

~~(d) The Fund *shall* be subject to an annual audit, and its findings *shall* be posted on the department's website.~~

~~ARTICLE 5~~

~~TRANSFER PURSUANT TO TREATY~~

~~§ 90.100. [Untitled Section].~~

~~When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, *I Maga'lahen Guåhan* (the Governor of Guam) or the Director of the Department of Corrections, if designated by *I Maga'lahi* (the Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. *I Maga'lahen Guåhan* (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.~~

ARTICLE 6

CIVILIAN CORRECTIONS RESERVE PROGRAM

§ 90.201. Creation.

(a) There is hereby created within the Department of Corrections (DOC) the Civilian Corrections Reserve Program (CCRP), which *shall* be headed by the Director of DOC (Director).

(b) The Director, subject to the advice and control of the Governor, *shall* be responsible for carrying out the purposes of this Article, and shall have such additional duties and responsibilities as are authorized herein, or as may be prescribed by the Governor.

§ 90.202. Functions and Duties.

(a) The general functions and duties of the CCRP *shall* be to provide backup manpower to protect the public from the destructive actions of law offenders through control and rehabilitation. It *may* provide staff services to the Judiciary, the Parole Board, probation officers, and interested agencies of the Executive Branch.

(b) The Director *shall* formulate a program whereby the CCRP *shall* adhere to the functions and duties herein prescribed. From time to time, the Director shall review and revise the functions and duties of the CCRP to ensure an amicable discharge of responsibilities and duties acknowledging the fact that their roles are an extension of the duties of the regular personnel.

§ 90.203. Recruitment.

(a) The Director *shall* recruit, on an entirely volunteer basis, local residents who desire to make available their services to assist the Department of Corrections in carrying out the function of protecting the public from the destructive actions of law offenders through control and rehabilitation.

(b) The Director *shall* further promulgate rules and regulations for recruitment regarding the age, health, and other requirements.

(c) Nothing in this Section shall prohibit the Director from recruiting a resident who is a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

§ 90.204. Training, Equipping, and Maintenance of Records.

(a) Training for the CCRP members *shall* be conducted pursuant to the provisions of the Peace Officer Standards and Training (POST) Commission in 17 GCA Chapter 51. Initial training requirements *shall* be identical to those required of DOC cadets.

(b) The Director *shall* maintain a roster of reservists who have received the training prescribed by 17 GCA Chapter 51. In order to maintain membership in the CCRP, each member must keep up with his scheduled training, and no reservist may remain in the CCRP if he or she is unable to keep up with or otherwise absorb the training. Additionally, basic supplies and equipment *shall* be provided to ensure a constant operability of the CCRP, including a continuing program for replacement.

(c) Any member of the CCRP who has *not* met the minimum qualifications/certifications for firearms safety and proficiency, physical fitness, recruitment clearances, and background checks *shall not* be allowed to serve in the CCRP.

§ 90.205. Reservist: Authority.

Whenever members of the CCRP are rendering assistance to DOC, such volunteers *shall* have the same powers, duties, rights (including coverage under the Worker's Compensation Act), privileges and immunities, as if they were paid, full-time members of the Department of Corrections, except that they *shall* earn recruitment credit for services performed as volunteers.

§ 90.206. Same: Allowance.

Each member of the CCRP who successfully completes probationary requirements as established by the Director, and who serves a minimum of twenty (20) hours to maintain good standing as a CCRP officer, and forty-two (42) hours per month, *shall* receive an allowance of Five Hundred Dollars ($500) per month to defray the cost of maintenance of their equipment and uniforms. The Department of Corrections *shall* identify funds within their department appropriations to satisfy the intent of this Section.

§ 90.207. Authorization for Full-Time CCRP Officers.

(a) The Department of Corrections (DOC) may employ a CCRP officer on a temporary, full-time basis, if such officer is an active member and has attained at least two thousand eighty (2,080) cumulative service hours when a critical need arises due to military activation of DOC officers or absence due to long-term disability status that has been certified by a medical doctor. DOC may exercise this authority provided its authorized budget for personnel is *not* exceeded. The CCRP officer *shall* return to reservist status pursuant to this Article when the incumbent returns from military service or long-term disability or at the discretion of the Director.

(b) When employed by DOC, a CCRP officer may only serve as an equivalent of Corrections Officer I and be compensated as a Corrections Officer I, Step I. Said CCRP officer *shall* be eligible to receive sick leave, be eligible for the Government of Guam Health Insurance Program, and *shall not* be eligible for a stipend as a Reserve officer for the duration of their temporary employment with DOC.

(c) A CCRP reservist *shall* be offered permanent employment in the event a permanent position becomes available at DOC; provided, that the reservist meets all of the qualifications as prescribed in this Article. The Director *shall* promulgate rules and regulations that determine the order in which reservists are selected for permanent service.

(d) Notwithstanding 10 GCA § 77114(a)(1), a CCRP officer who serves as a Corrections Officer I, Step I under this Section may be a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

§ 90.208. Same: Eligibility and Oath.

(a) No person shall be a volunteer member of the CCRP established under this Article who advocates a change by force or violence in the constitutional form of the Government of the United States or of Guam, or the overthrow of any government in the United States by force, or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(b) Every volunteer *shall*, entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in Guam, which oath *shall* be substantially as follows:

> "I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the laws of Guam, against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter and I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the Government of the United States or of Guam by force or violence; and that during such time as I am a member of the Civilian Corrections Reserve Program I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or Guam by force or violence."

§ 90.209. Rules and Regulations: Recommendations.

The Director is authorized and empowered to recommend to the Governor for issuance as executive orders the making, amendment, and rescission of such orders, rules and regulations as may be necessary to carry out the provisions of this Article.

ARTICLE 7

THE DEPARTMENT OF CORRECTIONS MODERNIZATION ACT OF 2021

§ 90.301. Legislative Findings and Policy.

(a) I Liheslaturan Guåhan finds that the Department of Corrections (DOC) was established by Public Law 9-208 on July 18, 1968 within the executive branch of the Government of Guam. Before the enactment of Public Law 9-208, the Department of Corrections was first known as the Guam Penitentiary and through Executive Order 68-23, issued by Governor Manuel F.L Guerrero, the Penitentiary was transferred to the Department of Corrections, which was effective on November 1, 1968.

(b) The Department of Corrections is the only prison on Guam and provides services to local and federal agencies. DOC provides custodial care to individuals who are convicted of crimes and for those who are waiting judicial disposition. The environment of the prison must meet federal standards such as the National Prison Standards, Prison Rape Elimination Act (PREA), and the National Commission on Correctional Healthcare Standards (NCCHC), which ensures that the living conditions are decent and humane; but, with the issue of overcrowding and structural failures, DOC has been struggling to properly execute their mandates and comply with national standards. DOC is ensuring that it prevents any violations of the Federal Consent Decree, which requires the Government of Guam to improve the living conditions of the inmates following the Civil Rights of Institutionalized Persons Act.

(c) The Adult Correctional Facility (ACF) in Mangilao is in its stages of failure due to age and lack of modern technology, which is affecting the operations and personnel of the correctional agency. The ACF was built to hold a maximum of three hundred (300) inmates and detainees; and currently, the population of Guam is growing as well as its crime rates, while DOC has outgrown its ACF. Over time, other DOC buildings were added to address the overcrowding issues of the ACF, and buildings used for rehabilitation and offices were re-designed to accommodate the rising population of prisoners. The Adult Correctional Facility is made of fifteen (15) housing units, which holds not only local inmates and detainees, but also immigration and federal detainees. The lack of proper facilities prevents DOC from properly providing rehabilitation to the inmates.

(d) The poor condition of the housing units of the prison is not cost effective or adequate to handle the growing prisoner population, and DOC recognized the difficulty in meeting its mandates of providing security, health, rehabilitation and welfare to the inmates and detainees under its care without compromising the well-being of its personnel. The main goal of the Department of Corrections is to provide rehabilitation to individuals who have been convicted of crimes and ensure that they become useful members of the community and to themselves.

(e) Furthermore, I Liheslaturan Guåhan finds that DOC has plans to build a new Department of Corrections facility with a bed capacity for one thousand (1,000) inmates to replace its current prison if funding was available. The new prison would provide the proper space to meet its mandates and the demands of its growing prisoner population. The Department of Corrections had started to draft an eighty (80)-year master plan, which will provide a phase-to-phase plan to construct a new Department of Corrections facility that will meet its construction goal of a bed capacity of one thousand (1,000) inmates. The Department of Corrections' goal is to ensure that all the issues on structural, technology, and security of the inmates and

personnel are covered. The master plan also ensures that DOC meets all federal standards such as the National Prison Standards and PREA standards.

(f) Therefore, it is the intent of I Liheslaturan Guåhan to provide the Department of Corrections with the proper confinement of offenders in a controlled environment prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, which also promotes the safety of the people of Guam. I Liheslaturan Guåhan has identified funding to construct a new Department of Corrections Adult Correctional Facility through the Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million Dollars ($60,000,000) annually, of which an estimate of no more than Five Million Dollars ($5,000,000) will be allocated for the payments of the lease-back agreement.

(g) In an effort to overcome financing hurdles, and to provide DOC with the proper tools to meet its mandates, I Liheslaturan Guåhan desires to authorize the Government of Guam to enter into contract for the financing, design, construction, and long-term capital maintenance of a new Department of Corrections facility with private sector contractors who can provide long-term financing.

(h) To facilitate the financing, design, construction, and maintenance of a new Department of Corrections facility envisioned by this Act, the Government of Guam will be authorized to execute a lease agreement of existing property under its inventory for up to thirty (30) years on which the new Department of Corrections facility will be constructed.

(i) The lease of the Government of Guam's property will be to the contractor and/or the Guam Economic Development Authority, who will design and construct the new Department of Corrections facility and provide a funding for the design and construction through appropriations received from the reimbursement of the Earned Income Tax Credit for Fiscal Year 2022 and prospective appropriations from the General Fund, thereafter annually. Upon completion of the construction, the

facilities and land will be leased back to the Government of Guam for a period not to exceed the initial ground lease to the contractor over which time the Government of Guam will amortize, as lease payments to the contractor, the cost of financing, design, construction, and related expenses of the new Department of Corrections.

(j) The contractor/developer will also be responsible for the capital maintenance and repair of the Department of Corrections constructed under this Act, which costs shall be paid by the Government of Guam as provided for under this Act. At the expiration of the lease-back period, the Government of Guam real property and the Department of Corrections constructed on the Government of Guam real property will revert to the Government of Guam with no further obligations to the contractor.

§ 90.302. Definitions.

For the purposes of this Article and unless otherwise specified, the following words and phrases are defined to mean:

(a) *Act* means Article 7 of Title 9, Chapter 90, Guam Code Annotated, which shall be known as "The Department of Corrections Modernization Act of 2021."

(b) *Contract* shall mean the design, construction, and financing contract entered by and between the Government of Guam and the contractor following negotiations on the response to the Request for Proposal.

(c) *Contractor/developer* shall mean the authorized entity which shall be the signatory on the contract and shall be fully responsible for carrying out the finance, design, construction, and maintenance of the new Department of Corrections. The contractor/developer may cooperate with another entity or entities in any manner the contractor/developer deems appropriate to provide for the financing, design, and construction of the new Department of Corrections envisioned by this Chapter.

(d) The *Department of Corrections Construction Committee* shall be chaired by the Administrator or Deputy Administrator of the Guam Economic

Development Authority, and include the Director and Deputy Director of the Department of Corrections, the Director or Deputy Director of the Department of Public Works, the Director or Deputy Director of the Department of Land Management, the Director or Deputy Director of the Bureau of Statistics and Planning, the Director or Deputy Director of the Bureau of Budget and Management Research, and the Director or Deputy Director of the Department of Administration.

(e) *Correctional agency* shall mean the Department of Corrections.

(f) *Correctional facility* shall mean the Department of Corrections Adult Correctional Facility.

(g) *Lease* shall mean a lease from the Government of Guam itself or through the Department of Corrections to the contractor/developer entered at the time of the contract for the property.

(h) *Lease-back* shall mean the lease from the Guam Economic Development Authority and/or the contractor/developer to the Government of Guam itself or by and through the Department of Corrections of the newly constructed Department of Corrections.

(i) *Property* shall mean any property on which a new Department of Corrections is located.

§ 90.303. Authorization to Enter into Long-Term Leases.

(a) For the purpose of facilitating the financing, design, construction, and maintenance of the new Department of Corrections encompassed by this Act, the Government of Guam is authorized to lease property that will be used for the new Department of Corrections, as required, to the contractor/developer and/or the Guam Economic Development Authority; provided, such property is in the inventory of the Government of Guam.

(b) The Government of Guam is also authorized to lease-back from the contractor/developer and/or the Guam Economic Development Authority the property for a period mutually agreed upon between the Government of Guam and the contractor/developer and/or the Guam Economic Development Authority as may be reasonably necessary to amortize the lease-back period of no more than thirty (30) years the cost associated with the design, construction, and maintenance of the new Department of Corrections. In no event shall the end of such lease-back period be structured as an annually renewable lease with a provision for automatic renewals to the extent that pledged revenue under § 90.308 is available. The lease-back shall not be construed as a debt under any applicable debt limitation under the Organic Act of Guam or Guam law.

§ 90.304. Identification Projects and Procurement.

(a) The Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall utilize the program study of the correctional agency to identify and prioritize potential projects to be completed.

(1) The list of projects identified by the Program Study of the correctional agency shall be included in one (1) Request for Proposal developed by the Guam Economic Development Authority.

(A) Upon receipt of the Program Study, the Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall solicit Request for Proposals (RFP) for a contractor/developer, in compliance with the Guam Procurement Law, for the financing, design, and construction of the Department of Corrections, according to the needs of the correctional agency and consistent with this Article.

(B) GEDA is also hereby authorized to solicit the services for a Program Management Office, which shall include, but not be limited to, creating

scopes of work, coordinating projects and performance targets, conducting periodic quality control reviews, assuring timely product generation and response, and managing the project to produce a quality product within the budget and schedule.

(2) The choice of the contractor/developer shall be made by the Department of Corrections Construction Committee. The committee shall assess the prior performance of the contractor/developer on similar projects, and shall be free to disqualify any contractor/developer that does not have a successful record of project completion on Guam or any similar isolated locality.

(b) The Committee shall also specifically consider the contractor/developer's ability and performance with regards to the financing, development and construction of a correctional facility on Guam or any similar isolated locality.

(c) The selection of a contractor/developer shall be based upon the proposal that delivers the lowest cost value for Guam in meeting the objectives of the correctional agency.

(d) GEDA shall issue an RFP within thirty (30) days after the conclusion of its Program Study, in consultation with the Department of Corrections for the design, construction, and maintenance of the correctional facilities.

§ 90.305. Responsibility of Contractor/Developer.

The contract shall require that the contractor/developer be responsible for all costs, expenses, and fees of any kind or nature, associated with the design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of the Department of Corrections to the extent provided by GEDA in consultation with the Department of Corrections in the Request for Proposal. The lease may, for the purposes herein, provide that its term shall be extended for a period not to exceed the shorter of ten (10) years beyond the

original term of the lease-back, or such period of time as is necessary to repay in full any financing arranged pursuant to § 90.309 of this Article.

§ 90.306. Contractual Safeguards.

Prior to undertaking the work of finance, design, construction, and maintenance of the new Department of Corrections, the Guam Economic Development Authority, in consultation with the Department of Corrections and the contractor/developer, shall negotiate and enter into a binding construction contract to build the new Department of Corrections in accordance with Guam Building Code under 21 GCA Chapter 67, Guam Fire Safety Codes and any other applicable requirements. The construction contract shall contain contractual obligations typically found in Government of Guam construction contracts, including, but not limited to:

(a) warranties;

(b) liquidated damages;

(c) performance and payments bonds;

(d) indemnity;

(e) insurance;

(f) standard specifications;

(g) technical specifications;

(h) progress schedule;

(i) maintenance;

(j) compliance with Guam labor regulations;

(k) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;

(l) compliance with Public Law 28-98: restriction against contractors employing convicted sex offenders to work at Government of Guam venues; and

(m) the 2017 Guam Tropical Energy Code.

The contract must be approved as to form and legality by the Attorney General of Guam.

§ 90.307. Assignments.

To facilitate the purpose of this Act and provide security for the holders of any financing instruments issued pursuant to this Act, the contractor/developer may assign, without the need of the consent of the Guam Economic Development Authority, the contract, the lease and the lease-back to any underwriter, trustee, or other party as appropriate to facilitate the contractor/developer financing.

§ 90.308. Pledge or Reservation of Revenues.

(a) Rental payments under the lease and the lease-back may be secured by a pledge or other reservation of revenues collected by the Government of Guam from the following:

(1) The sum of no more than Five Million Dollars ($5,000,000) from the revenues received pursuant to 11 GCA Chapter 42, Earned Income Tax Credit will be available for Fiscal Year 2022 only.

(2) The sum of no more than Five Million Dollars ($5,000,000) from the General Fund shall be appropriated annually thereafter.

(3) The Governor of Guam may use federal funds that are made available to the Government of Guam by the United States Federal Government for the financing, design, construction, and maintenance of the new Department of Corrections facility.

(4) The use of other financing options is authorized for the purpose of this Act, including, but not limited to, loans, grants, bond financing, and other alternate funding options, subject to legislative approval.

(b) Any amounts reserved or pledged as provided in this Section shall be subject to annual appropriations for the purpose of making lease-back payments. The revenues pledged or reserved and thereafter received by the Government of Guam

or by any trustee, depository, or custodian shall be deposited in a separate account and shall be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further action, and such reservation or the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need be recorded.

§ 90.309. Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.

(a) To minimize the financing cost to the Government of Guam, financing utilized by the contractor/developer to fund the design, construction, and maintenance of the Department of Corrections shall be through tax-exempt obligations, taxable bond obligation, or other financial instruments; provided, such financing is available at interest rates determined by the Guam Economic Development Authority to be reasonable and competitive. The Guam Economic Development Authority shall be the issuer of any financial instruments or obligations unless the Guam Economic Development Authority waives its right to serve as the issuer of financial instruments or obligations. Alternatively, the contractor may use an alternative method of financing, including, but not limited to, a short-term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States of America if such financing will better serve the needs of the people of Guam. Such alternative financing shall be approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure that the Government of Guam pays the lowest possible interest rate so that the cost of the Government of Guam's financing of the design and construction of the Department of Corrections, amortized through the lease-back payments from the

Government of Guam to GEDA and or the contractor/developer, will be lower than regular commercial rates.

(b) *I Liheslaturan Guåhan*, pursuant to § 50103(k) of Chapter 50, Title 12, Guam Code Annotated, hereby authorizes the Guam Economic Development Authority to issue one or more additional series of tax-exempt and/or taxable obligations (in any case, the "bonds") for the purpose of financing the Department of Corrections Adult Correctional Facility, in an aggregate principal amount not to exceed Eighty Million Dollars ($80,000,000) for the following purposes:

(1) to finance the design, construction, and/or the maintenance of the Department of Corrections Adult Correctional Facility;

(2) to fund a deposit to a debt service reserve fund;

(3) to fund capitalized interest with respect to the bonds; and

(4) to pay expenses relating to the authorization, sale, and issuance of the bonds, including without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks, or other financial institutions providing credit enhancement fees, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale, and delivery of the bonds, subject to the following additional conditions:

(A) The terms and conditions of the bonds shall be as determined by the Guam Economic Development Authority by the execution of a certificate, trust agreement or indenture authorizing the issuance of the bonds; provided, however, that such terms and conditions shall be consistent with this Section, that the bonds shall have a final maturity not to exceed thirty (30) years; and an interest rate not to exceed seven percent (7%).

(B) No bonds authorized by this Section shall be sold until the Board of Directors of Guam Economic Development Authority has approved the sale by resolution, as provided in Chapter 50 of Title 12, Guam Code Annotated.

(C) The issuance of bonds pursuant to this Section shall not be subject to the approval of the voters of Guam.

§ 90.310. Prison IT, Building, and Security Management System.

(a) For the purpose of ensuring the long-serving duration of the Department of Corrections facility, GEDA may include in the specifications for the new correctional facility, the requirement for a prison information management system, a security and surveillance system, and a building management system. These systems identified must be done in consultation with the Department of Corrections and comply with the federal mandates related to prison records and to foster compliance with the Federal Standards for Prisons and Jails.

(b) GEDA, in consultation with the Department of Corrections, may determine the specifications for such systems based on comprehensive, state-of-the-art technology generally accepted within the United States Prison Industry in connection with the development for a new Department of Corrections facility. The specifications shall require that all systems are designed by the same software developer so as to ensure the delivery of the rehabilitation to the inmates.

(c) In order to ensure immediate response to system downtimes or failure, GEDA may include in the specifications the requirement that the provider of these systems have a local Guam Office and service technicians stationed on Guam.

§ 90.311. Utilities and Routine Maintenance and Repair.

The contractor/developer shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone, and cable and all maintenance and repair and exterior groundskeeping and landscaping and upkeep of the Department of Corrections.

§ 90.312. Maintenance Fund.

The contract with the contractor/developer, and the lease-back shall provide that all capital maintenance and repair of the Department of Corrections facility be performed by the contractor/developer. The contractor/developer shall provide sufficient funding for a separate maintenance fund for this purpose; sufficient funds for this purpose shall be defined as the cost of capital maintenance and repair for the remaining period of the lease agreement with the Government of Guam after the completion of the Department of Corrections. The maintenance fund shall be used exclusively for the purpose of capital maintenance and repair and shall be in an interest-bearing account segregated from other funds held in escrow.

§ 90.313. Rules and Regulations.

The Guam Economic Development Authority, in consultation with the Department of Corrections, may promulgate rules and regulations pursuant to the Administrative Adjudication Law as necessary to implement the provisions of this Article.

§ 90.314. Financial Plan Required.

GEDA shall prepare a financial plan in accordance with the following:

(a) At a minimum, the financial plan shall include a comprehensive report of the associated costs and sources of revenues required for the duration of the Department of Corrections Modernization Act of 2021 (Project). The financial plan should reflect the total Project cost and any phases that represent the Project development priorities. All anticipated Project revenues shall be matched and allocable to the anticipated Project costs and shall detail its impact on the overall debt ceiling.

(b) The financial plan shall be submitted to *I Maga'hågan Guåhan* and transmitted to the Speaker of *I Liheslaturan Guåhan*. No solicitation of Request for Proposal or invitation for bid authorized to effectuate the requirements of this

Act may be issued until the financial plan is delivered to the Speaker of *I Liheslaturan Guåhan*.

Section 28. Chapter 91 (Infant Child's Right to Life Act), Title 9, Guam Code Annotated was reviewed and no changes are recommended to this Chapter.

Section 29. Section 60109 of Chapter 60 of Title 10 Guam Code Annotated is hereby amended to read:

§ 60109. Concealed Firearms.

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. <u>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.</u>

Section 30. Section 60110 of Chapter 60 of Title 10 Guam Code Annotated is hereby amended to read:

§ 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.

Section 31. Section 60110.1 of Chapter 60 of Title 10 Guam Code Annotated is hereby amended to read:

§ 60110.1. Firearms.

A grace period for payment of fees due for renewal of registration or for new registration for a firearm for a 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.

EXHIBIT A

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION

INTERIM REPORT TO *I LIHESLATURAN GUÅHAN*

SUMBITTTED JUNE 13, 2025

Bma, Lm, 16EJ+03+.50/ rfpmsef .503

Outlook

Re: Messages & Communications Doc. No. 38GL-25-0721 through 0725.

From Guam Legislature Clerks <clerks@guamlegislature.gov>
Date Mon 6/16/2025 3:13 PM
To 38th Committee On Rules <committeeonrules@guamlegislature.gov>

Håfa Adai,
Received, and thank you.

Elijah Untalan
Clerks Office
I Mina'trentai Ocho na Liheslaturan Guåhan
Guam Congress Building, 163 Chalan Santo Papa, *Hagåtña,* Guam 96910
Voice: (671) 472-3465/3460 Fax: (671) 472-3524
guamlegislature.gov

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---

From: 38th Committee On Rules <committeeonrules@guamlegislature.gov>
Sent: Monday, June 16, 2025 2:59 PM
To: Guam Legislature Clerks <clerks@guamlegislature.gov>
Cc: Frank Blas Jr. <speakerblas@guamlegislature.gov>
Subject: Messages & Communications Doc. No. 38GL-25-0721 through 0725.

Håfa Adai Clerk's Office,
Please see attached, **Messages & Communications Doc. No. 38GL-25-0721 through 0725** for processing:

√	**38GL-25-0721**	Judiciary of Guam	Guam Criminal Law and Procedure Review Commission Plenary Meeting Packet for May 29, 2025*
√	**38GL-25-0722**	Guam Solid Waste Authority	Documents Relative to Small Purchases and Sole Source and Emergency Purchases for the month of May 2025*
√	**38GL-25-0723**	Port Authority of Guam	Revenues and Expenses Report for month ending February 28, 2025*
√	**38GL-25-0724**	Public Defender Service Corporation - Government of Guam	Government of Guam -Board of Trustees Meeting Packet for May 27, 2025*
√	**38GL-25-0725**	Office of the Governor of Guam	Appointment and Supporting Documents for Marcos W. Fong, Member, University of Guam Board of Regents.

Kindly reply to this email.

Si Yu'os ma'åse',
Marie Crisostomo
Committee on Rules Assistant
COMMITTEE ON RULES
Vice Speaker V. Anthony Ada, Chairperson
I Mina'trentai Ocho Na Liheslaturan Guåhan
38th Guam Legislature

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Messages and Communications for 38GL-25-0721*

2 messages

Speaker Frank Blas Jr. <speakerblas@guamlegislature.gov> Mon, Jun 16, 2025 at 10:00 AM
To: 38th Committee On Rules <committeeonrules@guamlegislature.gov>, Sabrina Salas Matanane <office.senatorbri@guamlegislature.gov>

Hafa Adåi,

Please see attached M&C Doc. No. 38GL-25-0721

38GL-25-0721	Judiciary of Guam	Guam Criminal Law and Procedure Review Commission Plenary Meeting Packet for May 29, 2025*

Si Yu'os Ma'åse'

Bernice Rivera

Administrative Assistant

Office of Speaker Frank F. Blas, Jr.

I Mina'trentai Ocho na Liheslaturan Guåhan 38th Guam Legislature

Guam Congress Building, 163 Chalan Santo Papa, Hagatña

(671)969-6456
speakerblas@guamlegislature.gov

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---------- Forwarded message ---------
From: **Lisa C. Ibanez** <libanez@guamcourts.gov>
Date: Fri, Jun 13, 2025 at 3:30 PM
Subject: Guam Criminal Law and Procedure Review Commission Interim Report
To: Speaker Frank Blas, Jr. <speakerblas@guamlegislature.gov>, senator.shawn@guamlegislature.gov <senator.shawn@guamlegislature.gov>, rennae.meno@guamlegislature.gov <rennae.meno@guamlegislature.gov>

Hafa Adai Speaker Blas, Senator Gumataotao, and Legislative Clerk Rennae Meno

Enclosed, please find a PDF copy of the CLRC's Interim Report approved at its plenary meeting of May 29, 2025 and a Word copy of the approved recommendations in blackline format.

Should you have any questions or require further information please do not hesitate to contact our office.

Senseramente,

Lisa C. Ibanez
Administrative Support
Guam Criminal Law and Procedure Review Commission
T: (671) 475-3278 ext. 252 E: libanez@guamcourts.gov

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3 attachments

CLRC-Interim -Report-2025.pdf
8011K

Att 3 Master Ch. Blackline Final.docx
301K

38GL-25-0721.pdf
1107K

38th Committee On Rules <committeeonrules@guamlegislature.gov> Mon, Jun 16, 2025 at 10:06 AM
To: "Speaker Frank Blas Jr." <speakerblas@guamlegislature.gov>

Håfa Adai!

Received and thank you.

Si Yu'os ma'åse',

Marie Crisostomo

Committee on Rules Assistant

COMMITTEE ON RULES

Vice Speaker V. Anthony Ada, Chairperson

I Mina'trentai Ocho Na Liheslaturan Guåhan

38th Guam Legislature

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[Quoted text hidden]

THE GUAM LEGISLATURE

Speaker Frank Blas Jr. <speakerblas@guamlegislature.gov>

Guam Criminal Law and Procedure Review Commission Interim Report

3 messages

Lisa C. Ibanez <libanez@guamcourts.gov> Fri, Jun 13, 2025 at 3:30 PM
To: "Speaker Frank Blas, Jr." <speakerblas@guamlegislature.gov>, "senator.shawn@guamlegislature.gov" <senator.shawn@guamlegislature.gov>, "rennae.meno@guamlegislature.gov" <rennae.meno@guamlegislature.gov>

Hafa Adai Speaker Blas, Senator Gumataotao, and Legislative Clerk Rennae Meno

Enclosed, please find a PDF copy of the CLRC's Interim Report approved at its plenary meeting of May 29, 2025 and a Word copy of the approved recommendations in blackline format.

Should you have any questions or require further information please do not hesitate to contact our office.

Senseramente,

Lisa C. Ibanez
Administrative Support
Guam Criminal Law and Procedure Review Commission
T: (671) 475-3278 ext. 252 E: libanez@guamcourts.gov

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Doc Type: 38GL-25-0721
OFFICE OF THE SPEAKER
FRANK F. BLAS, JR.
June 13, 2025
Time: 3:30 PM
Received:

Confidentiality Notice: The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please notify me immediately and destroy all copies of the original message.

2 attachments

CLRC-Interim -Report-2025.pdf
8011K

Att 3 Master Ch. Blackline Final.docx
301K

Speaker Frank Blas Jr. <speakerblas@guamlegislature.gov> Fri, Jun 13, 2025 at 3:32 PM
To: "Lisa C. Ibanez" <libanez@guamcourts.gov>
Cc: "senator.shawn@guamlegislature.gov" <senator.shawn@guamlegislature.gov>, "rennae.meno@guamlegislature.gov" <rennae.meno@guamlegislature.gov>

Received, thank you.

Speaker, Frank F. Blas, Jr.

I Mina'trentai Ocho na Liheslaturan Guåhan 38th Guam Legislature

Guam Congress Building, 163 Chalan Santo Papa, Hagatña

(671)969-6456
speakerblas@guamlegislature.gov

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[Quoted text hidden]

---

speakerblas@guamlegislature.gov <speakerblas@guamlegislature.gov> Fri, Jun 13, 2025 at 3:32 PM
To: libanez@guamcourts.gov, libanez@guamcourts.gov

Your message

To: libanez@guamcourts.gov
Subject: Guam Criminal Law and Procedure Review Commission Interim Report
Sent: 6/13/25, 3:30:02 PM GMT+10

was read on 6/13/25, 3:32:31 PM GMT+10

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. 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
INTERIM REPORT TO *I LIHESLATURAN GUÅHAN*
JUNE 13, 2025

38GL-25-0721
Messages and Communications
RECEIVED
COMMITTEE ON RULES
June 16, 2025
10:00 a.m.
Marie Crisostomo

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I. INTRODUCTION AND OVERVIEW OF THE COMMISSION.

A. Interim Report.

This Interim Report sets forth the recommendations of the Guam Criminal Law and Procedure Review Commission (the "Commission") for amendments to selected chapters of Title 9 of the Guam Code Annotated (Criminal and Correctional Code of Guam), as approved at the Commission's plenary meeting on May 29, 2025. This Report addresses only a portion of Title 9. The Commission's recommendations on the remaining chapters of Title 9, along with those concerning Title 8 (Criminal Procedure Code of Guam), will be included in a forthcoming report.

At the Commission's May 29, 2025 plenary meeting, the recommendations contained in this Interim Report received ten (10) votes in favor of approval, zero (0) votes against, and one (1) abstention. Four (4) members were absent. The recommendations were duly approved in accordance with the Commission's enabling legislation, which requires at least eight (8) affirmative votes.

Attachment 1 to this Interim Report is a copy of the Commission's enabling act, 1 GCA Chapter 25, enacted by P.L. 36-119:2 (Nov. 9, 2022), as amended by P.L. 37-125:XII:39 (Sept. 11, 2024).

Attachment 2 to this Interim Report is a table tracking the recommendations of the Commission by Chapter and Section.

Attachment 3 to this Interim Report presents approved recommendations in blackline format. Recommended amendments adding new language are underlined and amendments deleting existing language are struck-through. Commission comments are included to explain the recommendations.

B. Overview of the Commission.

The Commission was created by *I Liheslaturan Guåhan* in Public Law No. 36-119 (Nov. 9, 2022), as amended by P.L. 37-125:XII:39 (Sept. 11, 2024), to conduct the first comprehensive review of Guam's Criminal and Correctional Code and Criminal Procedure Code since their adoption by the 13th Guam Legislature in 1976.

Under Public Law No. 36-119, the Commission operates as a division of the Supreme Court of Guam and receives administrative support from the Judiciary of Guam, including office space, utilities, computers, and software licenses. The Commission consists of fifteen voting members representing the three branches of government, the Guam Bar Association (including attorneys with prosecutorial and criminal defense experience), full-time and retired judicial officers, directors of government criminal justice and law enforcement agencies, and private individuals from community-based and public interest organizations related to the criminal justice system. The Commission is further supported by several volunteer, non-voting members who contribute to the review of Guam's criminal laws.

Under Public Law 36-119, then-Chief Justice F. Philip Carbullido appointed Magistrate Judge Jonathan R. Quan as the Chairman of the Commission on December 27, 2022, and Attorney Andrew S. Quenga as the Executive Director of the Commission on January 9, 2023. The Commission formally began operations and held its initial plenary meeting on January 13, 2023.

Under Public Law 36-119, Chairman Quan established five subcommissions to focus on different areas of law and named a chairperson to each subcommission. Members of each subcommission were carefully and deliberately selected by the Chairman based on their criminal law experience. Each subcommission is composed of members designated by different statutory appointing authorities, and includes members from the prosecution and defense bars, and local community organizations. The five subcommissions are:

- Subcommission on Crimes Against Persons,
- Subcommission on Crimes Relating to Property,
- Subcommission on Drugs and Other Criminal Offenses,
- Subcommission on Criminal Procedure, and
- Ad Hoc Subcommission on Corrections-related Chapters

Under the direction of their Chairpersons, each subcommission is responsible for reviewing its assigned chapters and presenting any recommendations to the entire Commission at public plenary meetings for approval. Since the initial plenary meeting, and to the best of their abilities, the subcommissions have been meeting in working sessions to review criminal statutes. Review includes discussing whether revisions are appropriate, examining statutes from other jurisdictions, and deciding on any recommendations to present to the Commission for approval.

II. COMPOSITION OF THE COMMISSION.

A. Official Voting Members.

The table below identifies the voting members of the Commission as of May 2025, their statutory appointing authorities, and the subcommissions to which they are assigned.

OFFICIAL VOTING MEMBERS	APPOINTED BY
Hon. Jonathan R. Quan, Commission Chair	Chief Justice
Subcommission on Crimes Against Persons	
Attorney Joseph B. McDonald, Chair	GBA President
Attorney Christine Santos Tenorio	Speaker
PDSC Exe. Dir. Stephen Hattori [Designee Dep. Dir. John Morrison]	Statutory
GPD Chief Stephen Ignacio [Designee Sgt. Michael Elliott]	Statutory
Subcommission on Crimes Relating to Property	
Attorney Philip J. Tydingco, Chair	Speaker
Mr. Monty McDowell	Chief Justice

Attorney F. Randall Cunliffe	Chief Justice
Attorney William B. Brennan	GBA President
Subcommission on Drug and Other Criminal Offenses	
Hon. Maria T. Cenzon, Chair	Governor
Attorney Michael F. Phillips	Speaker
DOC Dir. Fred Bordallo [Designee Maj. Antone F. Aguon]	Statutory
Ms. Valerie Reyes	Governor
Subcommission on Criminal Procedure	
Hon. Anita A. Sukola (Ret.), Chair	Governor
Attorney General Douglas Moylan [Designee AAG Emily Rees]	Statutory

B. Volunteer, Non-voting Members

This table identifies volunteer, non-voting members who assist subcommissions in the review of criminal statutes.

VOLUNTEER, NON-VOTING MEMBERS
Subcommission on Crimes Against Persons
Hon. Sean E. Brown
Subcommission on Drug and Other Criminal Offenses
Hon. Elizabeth Barrett-Anderson (Ret.)
Compiler of Laws Geraldine Cepeda
Attorney Kristine B. Borja
Attorney Zachary Taimanglo
Attorney Valerie Nuesa
Attorney Kat Siguenza
Subcommission on Criminal Procedure
Executive Director Andrew Serge Quenga
Attorney Leonardo M. Rapadas
Ad-Hoc Subcommission on Corrections-Related Chapters
Attorney Kristina Baird
Attorney Mary Hill
Chief Parole Officer Michael P. Quinata
Chief Probation Officer Rossanna Villagomez-Aguon
Probation Supervisor Officer Jeremiah J.A. Cruz
Deputy Marshal Kennedy G. Robinson
Deputy Marshal Dodd Siegfred V. Mortera Jr.

III. WORK OF THE COMMISSION.

A. Statutory Mandates.

Under Public Law 36-119, the Commission is mandated to review the criminal laws of Guam and to recommend enactments, amendments, and repeals to *I Liheslaturan Guåhan*. More specifically, the Commission must conduct a comprehensive and systematic review of the Guam Criminal Procedure Code codified in Title 8 of the Guam Code Annotated, the Guam Criminal and Correctional Code codified in Title 9 of the Guam Code Annotated, and other criminal laws outside of Titles 8 and 9. The Commission is required to prioritize the review of the Criminal and Correctional Code and the focus of all subcommissions has been on Title 9.

Public Law 36-119 contemplates that this is a working Commission. In conducting their work, statutory and volunteer members rely heavily on their extensive experience with Guam criminal laws. Each member has the opportunity to provide their critical experience and input on Guam's criminal laws.

B. Commission Work Processes.

The Commission follows the guidelines for review set forth in Public Law 36-119. The primary work of the members occurs at the subcommission level, during working sessions called by their chairpersons. These working sessions may be in-person, virtual, or both; they may also be done by correspondence in the exchange of draft comments by email or by other electronic means. Reviewing statutes is very intensive and time-consuming. Since Guam's criminal codes are based primarily on the Model Penal Code (MPC), members base their review on other MPC jurisdictions, particularly those cited in the source comments of the Guam statutes. In addition, review may be based on U.S. jurisdictions with recently reformed or revised criminal codes such as Hawaii and the District of Columbia. Members identify provisions that are archaic or unused, unconstitutional or inorganic, or contain outdated language, among other issues, and propose recommendations to resolve such issues. Members may recommend amendments, repeals or recommend no change.

Subcommission recommendations are presented to the Commission in two review and approval processes. In the initial review process, subcommission recommendations are submitted to the Commission at plenary meetings for discussion by all members and approval by majority vote. If a recommendation is not approved, it is tabled for resolution of issues at the subcommission level, then presented again to the Commission for approval. All recommendations approved by the Commission in this initial process are subject, if necessary, to further review and refinement by subcommission members. In the final review process, recommendations are presented again to the Commission for final consideration and approval. This Interim Report contains recommendations that have been approved by the Commission through the final review phase.

C. Chapter Status Update.

There are forty-six (46) chapters in Title 9 of the Guam Code Annotated. Currently, the Commission has completely reviewed twenty-four (24) chapters. These twenty-four (24) chapters are presented in this Interim Report. Subcommissions are in the process of reviewing fourteen (14) chapters. Eight (8) chapters are pending review.

IV. CONCLUSION.

The Commission is committed to fulfilling its obligation to review all of Guam's criminal laws and will continue to work to the best of the ability of each member. Our subcommissions have the daunting task of reviewing thousands of criminal statutes throughout the GCA. Aside from the very small full-time staff, each member must devote significant time to reviewing their assigned chapters and sections and proposing changes in working sessions with their respective subcommissions. Their willingness to contribute their time and expertise speaks to their strong commitment to public service. Chairman Jonathan R. Quan and Executive Director Andrew Serge Quenga thank all current and past[1] members for their commitment and dedication to the work of the Commission.

We thank Chief Justice Robert J. Torres and Administrator of the Courts Danielle T. Rosete for their steadfast administrative support. We are also grateful to Justice F. Philip Carbullido and former Administrator of the Courts Kristina Baird for their instrumental support in establishing the Commission's offices.

We thank Speaker Frank F. Blas, Jr., and Senator Telo Taitague, Chairperson of the Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement, other sponsors of our enabling legislation, and the entire Legislature for its support of our mission.

Respectfully submitted this 13th day of June 2025.

Magistrate Judge Jonathan R. Quan
Chairman

Andrew S. Quenga
Executive Director

[1] Past official voting members include: Hon. Elizabeth Barrett-Anderson, DOC Director Robert Camacho (dec.); former Attorney General designees Marianne Woloschuk, Steven Coaty, and Nathan Tennyson; former Chief of Police designees Lt. David Brantley, and Lt. Ron Taitano (dec).

ATTACHMENT 1

1 GCA GENERAL PROVISIONS

CHAPTER 25

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION

CHAPTER 25
GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION

SOURCE: Entire Article added by P.L. 36-119:2 (Nov. 9, 2022).

2024 NOTE: Pursuant to 5 GCA § 1510, *I Maga'hågan/Maga'låhen Guåhan* means "Governor of Guam." Pursuant to 2 GCA § 1101, *I Liheslaturan Guåhan* means the "Guam Legislature."

§ 25.01. Short Title.
§ 25.02. Establishment; No Derogation of Organic Act Authority.
§ 25.03. Duties and Responsibilities.
§ 25.04. Composition.
§ 25.05. Executive Director.
§ 25.06. Meetings.
§ 25.07. Reporting Requirements.
§ 25.08. Administrative Support.

§ 25.01. Short Title.

This Act shall be known as the "Guam Criminal Law and Procedure Review Commission Act."

§ 25.02. Establishment; No Derogation of Organic Act Authority.

(a) There is created the Guam Criminal Law and Procedure Review Commission (Commission) to review the laws that address the criminal procedures and criminal laws of Guam; and to recommend enactments, amendments, and repeals to *I Liheslaturan Guåhan* for action.

(b) Neither this Act, nor the duties and responsibilities of the Commission established here, shall derogate, limit, or circumvent the authority of the Supreme Court of Guam to make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the judicial branch of Guam granted by 48 U.S.C.A. § 1424-l(a)(6).

§ 25.03. Duties and Responsibilities.

(a) The Commission shall conduct a comprehensive and systematic review of Guam laws, including the Guam Criminal Procedure Code codified in Title 8 of the Guam Code Annotated (GCA), the Guam Criminal and Correctional Code codified in Title 9 of the GCA, and other provisions in the statutory code and session laws of Guam relating to criminal law or procedure.

(b) In preparing the criminal code reform recommendations required by Subsection (a) of this Section, the Commission may:

(1) review criminal codes and code reform efforts in other jurisdictions, the American Law Institute Model Penal Code, including recently proposed amendments, and other criminal law resources;

(2) consult with other Guam, federal, and state departments and agencies, conduct community outreach, and engage in other activities to advance the Commission's statutory duties; and

(3) prioritize the review of Title 9.

(c) At the conclusion of its review, the Commission shall submit comprehensive criminal code reform recommendations to the Chief Justice of the Supreme Court of Guam, *I Maga'hågan/Maga'låhen Guåhan*,

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and the Speaker of *I Liheslaturan Guåhan* within forty-eight (48) months of the initial meeting described in § 25.06 of this Chapter.

(d) The Commission may contract for any professional services if such services cannot be satisfactorily performed by its employees.

(e) The Commission shall study and report on any relevant topic which *I Liheslaturan Guåhan*, by resolution, shall refer to the Commission for action.

(f) After completion of the review and submission of the recommendations required in this Section, the Commission shall, subject to additional appropriations by *I Liheslaturan Guåhan*, conduct periodic reviews, but not less than every five (5) years, of Guam's criminal laws under the provisions set forth in this Chapter to recommend amendments or repeals to bring the criminal laws of Guam into harmony with modern conditions.

SOURCE: Added by P.L. 36-119:2 (Nov. 9, 2022). Subsection (c) amended by P.L. 37-125:XII:39 (Sept. 11, 2024).

§ 25.04. Composition.

(a) The Commission shall be composed as follows:

(1) three (3) members appointed by the Chief Justice, of whom one (1) shall be a member of the general public with experience and interest in the services provided by community-based and public interest organizations relating to the criminal justice system;

(2) three (3) members appointed by *I Maga'hågan/Maga'låhen Guåhan*, of whom one (1) shall be a member of the general public with experience and interest in the services provided by community-based and public interest organizations relating to the criminal justice system;

(3) three (3) members appointed by the Speaker of *I Liheslaturan Guåhan*, of whom one (1) shall be a member of the general public with experience and interest in the services provided by community-based and public interest organizations relating to the criminal justice system, and may hold a degree in Human Services or a related field, including the Social Sciences;

(4) the Attorney General of Guam, or his or her designee;

(5) the Executive Director of the Public Defender Service Corporation, or his or her designee;

(6) the Chief of the Guam Police Department, or his or her designee;

(7) the Director of the Department of Corrections, or his or her designee;

(8) the Compiler of Laws, who shall serve as an ex-officio non-voting member; and

(9) the Executive Director of the Commission, who shall serve as an ex-officio non-voting member.

(10) two (2) members of the Guam Bar Association appointed by the President of the Guam Bar Association.

(b) As a result of their participation in the Commission, members shall not be subject to legislative confirmation, and shall not be subject to the public official reporting requirements in 4 GCA, Chapter 13.

(c) Commission members shall be appointed or designated within sixty (60) days of enactment of this Chapter, and shall serve until the submission of the report described in § 25.07 of this Chapter, unless replaced by the appointing or designating authority. Any vacancy in Commission membership shall be filled expeditiously by the appointing or designating authority, so as to not impede the work of the Commission.

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(d) The Chair of the Commission shall be an appointee of the Chief Justice, and shall be a judicial officer.

(e) The Chair of the Commission shall have the authority to create different subcommissions from among its members to focus on different areas of law and to report back to the entire Commission on findings and recommendations, and the Chair of the Commission shall appoint a chairperson for each subcommission.

(f) The appointees in this Section who are employees of any branch of the government of Guam may participate in the duties and responsibilities of the Commission if such participation is compatible with the ethical duties of their respective offices and positions.

§ 25.05. Executive Director.

(a) There is created the position of Executive Director of the Commission, who shall be responsible for and oversee the operations of the Commission; develop and institute internal policies, procedures, and processes to ensure efficient operations; and assume such duties and responsibilities as delegated and assigned by the Commission.

(b) In addition to any other qualifications which may be established, the Executive Director shall be an attorney licensed to practice in Guam; and shall be in good standing in every jurisdiction where he or she is licensed to practice law.

(c) The Executive Director shall be appointed by the Chief Justice, and shall be a full-time, unclassified employee of the Judiciary compensated and subject to removal in accordance with Judiciary of Guam Personnel Rules and Regulations adopted and promulgated by the Judicial Council, and shall be administratively supported by the Judiciary.

(d) In the exercise of his or her responsibilities under this Chapter, the Executive Director may:

(1) work closely with the Compiler of Laws in all aspects of searching and researching the GCA and the laws of Guam;

(2) request and utilize the services of any bar association, legislative committee, legislative office, profession, or other organization in any matter suitable for fulfilling the purposes of this Chapter;

(3) have access to any legislative, executive, or judicial reports, opinions, orders, or documents necessary to carry out the purposes of this Chapter; and

(4) conduct meetings, formal or informal, with attorneys, representatives from government entities, private sector businesses, community-based organizations, and others interested in the results and work of the Commission.

§ 25.06. Meetings.

(a) Initial Meeting. The Commission shall hold an initial planning and organizational meeting within thirty (30) days of the appointment of the Executive Director. Thereafter, the Commission shall hold regular meetings as necessary to fulfill the statutory responsibilities of the Commission.

(b) Plenary Meetings. The Commission shall hold a plenary meeting, consisting of all members of the Commission, at least once every six (6) months.

(1) A majority of all Commission members shall constitute a quorum for a plenary meeting.

(2) A formal vote on the recommendations in the final report under § 25.07(b) of this Chapter shall be conducted only during plenary meetings.

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(3) A recommendation must receive at least eight (8) votes in favor in a plenary meeting to be included in the final report under § 25.07(b).

(4) Plenary meetings shall be subject to the Open Government Law, codified at 5 GCA Chapter 8.

(5) Plenary meetings shall be scheduled by the Chair of the Commission.

(c) Subcommission Meetings. Members of subcommissions shall meet regularly to fulfill the statutory duties of the Commission.

(1) Subcommission meetings shall serve as working sessions for members to conduct discussions to further the Commission's duties and responsibilities under § 25.03 of this Chapter. A subcommission shall prepare its findings and recommendations, and present them to the entire Commission for consideration.

(2) Subcommission meetings shall not be subject to the Open Government Law, codified at 5 GCA, Chapter 8.

(3) There is no quorum requirement for subcommission meetings.

(4) Subcommission meetings may be scheduled by the Chair of the Commission, the Executive Director, or a subcommission chairperson.

(d) Commission meetings may be conducted in-person or virtually, and members may attend in-person, by videoconference, or by teleconference.

§ 25.07. Reporting Requirements.

(a) Progress Reports. The Commission shall submit progress reports to the Chief Justice, *I Maga'hågan/Maga'låhen Guåhan*, and the Speaker of *I Liheslaturan Guåhan* each quarter; and these reports shall be a summary of Commission activities during the prior quarter.

(b) Final Report. The Commission shall submit comprehensive criminal code reform recommendations as required by § 25.03(c) of this Chapter, which shall include proposed legislation for the revision of Title 8 and Title 9 of the GCA, and other provisions in the statutory code relating to criminal law and procedure. The report and proposed legislation should:

(1) use clear and plain language;

(2) apply consistent definitions;

(3) describe all elements, including mental states, that must be proven;

(4) reduce unnecessary overlap and gaps between criminal offenses;

(5) eliminate archaic and unused offenses;

(6) adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties;

(7) organize existing criminal statutes in a logical order;

(8) identify any crimes defined in common law that should be codified, and propose recommended language for codification;

(9) identify criminal statutes held to be unconstitutional and recommend their removal or amendment;

(10) propose such other amendments as the Commission believes are necessary; and

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(11) articulate specific steps for implementing the recommendations.

§ 25.08. Administrative Support.

(a) Administrative support for the Commission shall be provided through the Judiciary of Guam for any assistance required by the Commission, or hearing to be held under this Chapter.

(b) The Judiciary shall provide technical, clerical, and administrative support to the Commission. In exercising the responsibilities in this Chapter, the Judiciary may:

(1) accept grants, contributions, and appropriations;

(2) employ such professional or clerical staff as necessary for the operations of the Commission, under the Personnel Rules and Regulations of the Judicial Branch promulgated by the Judicial Council; and

(3) enter into contracts as necessary for the operations of the Commission, under the law and the rules and regulations promulgated by the Judicial Council.

(c) The Office of the Compiler of Laws shall provide technical and other assistance to the Commission, to the extent such assistance does not conflict with the duties of the Compiler of Laws as set forth in 1 GCA, Chapter 16 and Judiciary of Guam Personnel Rules and Regulations. The Compiler of Laws shall ensure that assistance provided to the Commission does not conflict with his or her duties to the Guam Code Advisory Commission under 1 GCA, Chapter 16, § 1611.

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ATTACHMENT 2

TITLE 9 SECTION STATUS

ATTACHMENT 2 – TITLE 9 SECTION STATUS

CHAPTER AND SECTION	TITLE	STATUS
Chapter 1	**Preliminary Provisions Definitions**	
§ 1.10.	Short Title, Criminal and Correctional Code.	Amend
§ 1.12.	Severability.	Repeal and Reenact
§ 1.14.	Purpose for Defining Offenses.	Amend
§ 1.16.	Territorial Applicability.	Amend
§ 1.18.	Classes of Crimes.	Amend
§ 1.19.	Felonies Defined and Classified.	Amend
§ 1.20.	Relationship of Code to Other Laws; Contempts, Penalties and Remedies.	Amend
§ 1.22.	Prosecution for Conduct Which Constitutes More Than One Offense.	Amend
§ 1.24.	Double Jeopardy. Same Offense.	Amend
§ 1.26.	Double Jeopardy. Different Offense.	Amend
§ 1.28.	Concurrent Jurisdiction -When a Bar to Prosecution.	Amend
§ 1.30.	Former Prosecutions. When Not a Bar to Present Prosecution.	Amend
§ 1.34.	Rules of Construction.	Repeal and Reenact
§ 1.36.	Headings.	Repeal and Reenact
§ 1.38.	Amendments Included.	Repeal and Reenact
§ 1.42.	Tenses.	Repeal and Reenact
§ 1.44.	Gender.	Repeal and Reenact
§ 1.46.	Number.	Repeal and Reenact
§ 1.48.	Shall and May.	Repeal and Reenact
§ 1.50.	Military Authority.	No Change
§ 1.60.	General Definitions Applicable to Entire Title	Repeal
§ 1.70.	Peace Officer	No Change
§ 1.80.	Territory	Repeal
Chapter 4	**General Principles of Liability**	
§ 4.10	Conduct to Include Voluntary Act or Omission.	No Change
§ 4.15	Voluntary Act Defined.	No Change
§ 4.20	Liability for Omission Limited.	No Change
§ 4.25	Culpability.	No Change
§ 4.30	Culpability Defined.	No Change
§ 4.35	Culpability Applied to Elements of Offense.	No Change
§ 4.40	Culpable Mental State Generally Required.	No Change
§ 4.45	Same: When Inapplicable.	Amend
§ 4.50	Causation Established and Defined.	Amend
§ 4.55	Guilt Established by Causing or Aiding Innocent Party in Commission of Crime.	No Change
§ 4.60	Guilt Established by Complicity.	No Change
§ 4.65	Criminal Facilitation Established and Punished.	No Change
§ 4.70	Criminal Liability for Acts of Another: Non-Availability of Certain Defenses.	Amend
§ 4.75	Same: Defenses Available.	Amend
§ 4.80	Criminal Liability of Corporations.	No Change
Chapter 16	**Criminal Homicide**	
§ 16.10.	Definitions Applicable to Chapter.	No Change
§ 16.20.	Criminal Homicide Defined.	No Change
§ 16.30.	Aggravated Murder Defined.	Amend
§ 16.40.	Murder Defined.	Amend
§ 16.50.	Manslaughter Defined and Classified.	Amend
§ 16.60.	Negligent Homicide Defined and Classified.	No Change
Chapter 17	**Unborn Victims of Violence Act**	
§ 17.01.	Title.	No Change
§ 17.02.	Legislative Statement and Intent.	No Change
§ 17.03.	Definitions.	No Change

CHAPTER AND SECTION	TITLE	STATUS
§ 17.04.	Application.	No Change
§ 17.05.	Murder of an Unborn Child.	No Change
§ 17.06.	Manslaughter of an Unborn Child.	No Change
§ 17.07.	Aggravated Assault of an Unborn Child.	No Change
§ 17.08.	Assault of an Unborn Child.	No Change
§ 17.09.	Knowledge Not a Defense.	No Change
§ 17.10.	No Prohibition.	No Change
Chapter 19	**Assault, Reckless Endangering, Terrorizing**	
§ 19.10.	General Definitions.	No Change
§ 19.20.	Aggravated Assault; Defined and Punished.	No Change
§ 19.30.	Assault; Defined and Punished.	No Change
§ 19.40.	Reckless Conduct; Defined and Punished.	No Change
§ 19.50.	Terroristic Conduct; Defined and Punished.	Amend
§ 19.60.	Terrorizing; Defined and Punished.	No Change
§ 19.69.	Definitions.	No Change
§ 19.70.	Stalking.	Amend
§ 19.80.	Strangulation; Defined & Punished.	No Change
§ 19.81.	Interfering with the Reporting of Family Violence; Defined & Punished.	Amend
Chapter 22	**Kidnapping and Related Offense**	
§ 22.10.	General Definitions.	No Change
§ 22.20.	Kidnapping; Defined and Punished.	No Change
§ 22.30.	Felonious Restraint; Defined and Punished.	No Change
§ 22.35.	Unlawful Restraint; Defined and Punished.	No Change
§ 22.40.	Child Stealing; Defined and Punished.	No Change
§ 22.50.	Custodial Interference; Defined and Punished.	No Change
§ 22.60.	Criminal Intimidation, Defined and Punished.	No Change
Chapter 25	**Sexual Offenses**	
§ 25.10	Definitions.	Amend
§ 25.15	First Degree Criminal Sexual Conduct.	No Change
§ 25.20	Second Degree Criminal Sexual Conduct.	No Change
§ 25.25	Third Degree Criminal Sexual Conduct.	No Change
§ 25.30	Fourth Degree Criminal Sexual Conduct.	No Change
§ 25.35	Assault with Intent to Commit Criminal Sexual Conduct.	No Change
§ 25.40	Victim's Testimony Need Not be Corroborated.	No Change
§ 25.45	Resistance Not Required.	No Change
Chapter 25A	**Solicitation of Children and Child Pornography**	
§ 25A101	Legislative Findings and Intent	No Change
§ 25A102.	Indecent Electronic Display to a Chil	Amend
§ 25A103.	Electronic Enticement of a Child as a Third Degree Felony	Amend
§ 25A104.	Electronic Enticement of a Child as a Second Degree Felony	Amend
§ 25A105	Electronic Enticement of a Child as a First Degree Felony	Amend
§ 25A106	Electronic Enticement; No Defense	Add
§ 25A201	Definitions	No Change
§ 25A202	Possession of Child Pornography	No Change
§ 25A203	Dissemination of Child Pornography	No Change
§ 25A204	Production of Child Pornography	No Change
Chapter 31	**Offenses Against The Family**	
§ 31.10.	Bigamy; Defined & Punished.	No Change
§ 31.15.	Incest: Defined & Punished.	No Change
§ 31.20.	Abortion.	No Change
§ 31.21.	Illegal Abortions Punished.	No Change
§ 31.22.	Refusal to Participate in Abortion.	No Change
§ 31.30.	Child Abuse; Defined & Punished.	Amend
§ 31.35.	Reporting of Suspected Child Abuse to DPHSS.	Repeal
§ 31.37.	Registry of Cases of Suspected Child Abuse Reported to DPHSS.	Repeal
§ 31.40.	Abuse of an Incompetent: Defined & Punished.	No Change

CHAPTER AND SECTION	TITLE	STATUS
§ 31.45.	Failure to Provide; Defined & Punished.	No Change
§ 31.50.	Surety for Support.	No Change
§ 31.55.	Fine Imposed May be Used for Support.	No Change
§ 31.60.	Criminal Spouse Abuse: Penalty. [Repealed]	Repeal
§ 31.65.	Curfew Hours for Minors.	Repeal
§ 31.70.	Leaving Children Unattended or Unsupervised in Motor Vehicles; Penalty; Authority of Law Enforcement Officer.	Amend
Chapter 34	**Arson, Negligent Burning, Criminal Mischief**	
§ 34.10.	Definitions.	No Change
§ 34.20.	Aggravated Arson; Defined & Punished.	No Change
§ 34.30.	Arson; Defined & Punished.	No Change
§ 34.40.	Negligent Burning; Defined & Punished.	No Change
§ 34.50.	Criminal Mischief; Defined.	Amend
§ 34.60.	Criminal Mischief; Punished.	Amend
§ 34.70.	Graffiti Prohibited.	Amend
§ 34.80.	Use of Fines Collected.	No Change
§ 34.90.	Destruction of Property: Penalty.	No Change
Chapter 37	**Burglary and home invasion**	
§ 37.10.	Definitions: Ref. to § 16.10.	No Change
§ 37.20.	Burglary: Defined. Punishment Classified.	Amend
§ 37.30.	Criminal Trespass: Defined, Punished, Defenses.	No Change
§ 37.40.	The Breaking of Window Glass to Gain Access to Vehicles.	Repeal
§ 37.210.	Home Invasion.	No Change
§ 37.220.	In the Course of Committing Home Invasion.	No Change
§ 37.230.	Knowledge of Occupancy is Not a Defense.	No Change
§ 37.240.	Home Invasion Punished.	No Change
§ 37.310.	Carjacking.	No Change
§ 37.320.	Armed Carjacking.	No Change
§ 37.330.	In the Course of Committing Carjacking or Armed Carjacking.	No Change
§ 37.340.	Knowledge of Occupancy is not a Defense.	No Change
§ 37.350.	Carjacking Punished.	No Change
§ 37.360.	Armed Carjacking Punished.	No Change
Chapter 40	**Robbery**	
§ 40.10.	1st Degree Robbery; Defined & Punished.	No Change
§ 40.20.	2nd Degree Robbery; Defined & Punished.	No Change
§ 40.30.	3rd Degree Robbery; Defined & Punished.	No Change
§ 40.40.	Definition of an Act.	No Change
§ 40.50.	No Defense of "Claim of Right".	No Change
Chapter 43	**Theft and related offenses**	
§ 43.10.	Definitions.	No Change
§ 43.15.	Theft a Single Offense.	No Change
§ 43.20.	Theft; Defined & Punishment Classified.	Amend
§ 43.21.	Theft of Utilities.	No Change
§ 43.25.	Defenses; Conditions Upon Same.	No Change
§ 43.30.	Theft of Property; Defined.	No Change
§ 43.31.	Crime Against the Community; Defined and Punishment.	Amend
§ 43.35.	Theft by Deception; Defined.	No Change
§ 43.40.	Theft by Threatening; Defined; Defense.	No Change
§ 43.45.	Theft of Property Lost, Mislaid or Delivered by Mistake; Defined.	No Change
§ 43.50.	Theft by Receiving Stolen Property; Defined.	No Change
§ 43.51.	Theft of Utilities.	No Change
§ 43.55.	Theft of Services; Defined.	No Change
§ 43.56.	Unauthorized Reception of Cable Services.	No Change
§ 43.60.	Theft of Property Held in Trust; Defined.	No Change
§ 43.65.	Unauthorized Use of Vehicle: Defined; Punished; Defense.	No Change
§ 43.70.	Reimbursement to Owner of Stolen Livestock.	No Change

CHAPTER AND SECTION	TITLE	STATUS
§ 43.75.	Theft of Dog or Cat, When a Felony of the Second Degree.	No Change
§ 43.80.	General Definitions.	No Change
§ 43.81.	Conceal Defined.	No Change
§ 43.82.	Full Retail Value Defined.	No Change
§ 43.83.	Merchandise Defined.	No Change
§ 43.84.	Merchant Defined.	No Change
§ 43.85.	Minor Defined.	No Change
§ 43.86.	Person Defined.	No Change
§ 43.87.	Peace Officer Defined.	No Change
§ 43.88.	Premises of a Retail Mercantile Establishment Defined.	No Change
§ 43.89.	Shopping Cart Defined.	No Change
§ 43.90.	Under-Ring Defined.	No Change
§ 43.91.	Retail Theft; Defined.	No Change
§ 43.92.	Presumptions.	No Change
§ 43.93.	Detention.	No Change
§ 43.94.	Affirmative Defense.	No Change
§ 43.94.1	Severability.	No Change
§ 43.95.	Unlawful Use of Theft Detection Shielding *or* Deactivation Devices.	No Change
§ 43.96.	Purpose.	No Change
§ 43.97.	Short Title.	No Change
§ 43.98.	Definitions.	No Change
§ 43.99.	Penalties.	No Change
Chapter 46	**Forgery, Fraudulent Practices & Telephone Records**	
§ 46.10.	Forgery; Defined & Punished.	No Change
§ 46.15.	Criminal Simulation; Defined & Punished.	No Change
§ 46.20.	Tampering with Recordable Documents; Defined & Punished.	No Change
§ 46.25.	Tampering with Records to Deceive or Conceal; Defined & Punished.	No Change
§ 46.30.	Issuance of Dishonored Checks.	Amend
§ 46.35.	Fraudulent Use of Credit Cards; Defined & Punished.	Amend
§ 46.40.	Deceptive Business Practices; Defined & Punished.	No Change
§ 46.45.	Bribery for Violation of Duty; Defined & Punished.	No Change
§ 46.50.	Rigging of Public Exhibitions; Defined; Failure to Report; Soliciting Punishment.	Repeal
§ 46.55.	Defrauding Creditors; Defined & Punished.	No Change
§ 46.60.	Fraud in Insolvency; Defined & Punished.	No Change
§ 46.65.	Receiving Deposits in Failing Bank; Defined & Punished.	No Change
§ 46.70.	Misapplication of Entrusted Funds; Defined & Punished.	No Change
§ 46.75.	Procuring Execution of Financially Significant Instruments by Fraud, Defined & Punished.	No Change
§ 46.80.	Impersonation; Identity Theft; Defined & Punished.	Amend
§ 46.90.	Definitions.	No Change
§ 46.91.	Prohibition on Use of Telephone Records.	No Change
§ 46.92.	Penalties:	No Change
§ 46.93.	Additional Penalties.	No Change
§ 46.94.	Exceptions.	No Change
§ 46.100.	Title.	No Change
§ 46.101.	Definitions.	No Change
§ 46.102.	Mortgage Fraud.	Amend
§ 46.103.	Classification of Offense.	Amend
§ 46.104.	Mortgage Fraud Prosecutor and Investigators.	Repeal
§ 46.401.	Legislative Findings and Intent.	No Change
§ 46.402.	Definitions.	No Change
§ 46.403.	Phishing and Pharming.	No Change
§ 46.404.	Immunity for Disabling Phishing and Pharming Sites.	No Change
§ 46.405.	Violations.	No Change
§ 46.406.	Applicability.	No Change

CHAPTER AND SECTION	TITLE	STATUS
§ 46.407.	Severability.	No Change
§ 46.408.	Effective Date.	No Change
§ 46.501.	Legislative Intent.	No Change
§ 46.502.	Definitions.	No Change
§ 46.503.	Violations.	No Change
§ 46.504.	Penalties.	Amend
§ 46.505.	Forfeiture.	No Change
§ 46.506.	Civil Action by Attorney General.	No Change
§ 46.507.	Lawfulness of Electronic Mail Service Provider Policies.	No Change
§ 46.508.	Severability.	No Change
§ 46.601.	Title.	No Change
§ 46.602.	Legislative Intent.	No Change
§ 46.603.	Definitions.	No Change
§ 46.604.	Prohibitions, Use of Software.	No Change
§ 46.605.	Other Prohibitions.	No Change
§ 46.606.	Exceptions.	No Change
§ 46.607.	Remedies.	No Change
§ 46.608.	Good Samaritan.	No Change
Chapter 47	**Trademark Counterfeiting Act**	
§ 47.10.	Definitions.	No Change
§ 47.20.	Counterfeiting of Registered Trademarks.	No Change
§ 47.30.	Trafficking of Counterfeited Goods.	No Change
§ 47.40.	Aiding and Abetting the Trafficking of Counterfeit Goods.	No Change
§ 47.50.	Defenses, Affirmative Defenses, and Limitations on Remedies.	No Change
§ 47.60.	Enforcement.	No Change
§ 47.70.	Restitution.	No Change
§ 47.80.	Protection for Landlords.	No Change
Chapter 48	**Notification of Breaches of Personal Information**	
§ 48.10	Legislative Findings and Intent	No change
§ 48.20	Definitions	No change
§ 48.30	Disclosure of Breach of Security of Computerized Personal Information by an Individual *or* Entity	No change
§ 48.40	Procedures Deemed in Compliance with Security Breach Requirements	No change
§ 48.50	Violations	No change
§ 48.60	Applicability	No change
§ 48.70	Effective Date	No change
§ 48.80	Preemption	No change
Chapter 52	**Perjury and Offenses Against the Integrity of Official Proceedings**	
§ 52.10.	Definitions.	Amend
§ 52.15.	Perjury; Defined & Punished.	No Change
§ 52.20.	False Statement Under Oath; Defined & Punished.	No Change
§ 52.25.	Unavailability of Certain Defenses.	No Change
§ 52.30.	Unsworn Falsifications; Defined & Punished.	Amend
§ 52.40.	Intimidation of Witnesses by Extortion; Defined & Punished.	No Change
§ 52.45.	Witness Bribery: Solicitation: Definitions; Punishment; Affirmative Defenses.	No Change
§ 52.50.	Tampering with Witnesses: Defined & Punished.	No Change
§ 52.55.	Falsifying Evidence; Defined & Punished.	Amend
§ 52.60.	Destroying Evidence; Defined & Punished.	Amend
§ 52.65.	Unlawful Communication with Jurors; Defined & Punished.	No Change
Chapter 55	**Interference with Government Operations and Law Enforcement**	
§ 55.10.	Tampering with Public Records; Defined & Punished.	Amend
§ 55.15.	Hindering Apprehension or Prosecution; Defined & Punished.	Amend
§ 55.20.	False Alarms; Defined & Punished.	Amend
§ 55.25.	Making False Reports; Defined & Punished.	Amend
§ 55.30.	Impersonating a Public Officer; Defined & Punished.	Amend

CHAPTER AND SECTION	TITLE	STATUS
§ 55.35.	Resisting Arrest of Self or Other; Defined & Punished.	Amend
§ 55.40.	Disarming of a Peace Officer; Defined & Punished.	Amend
§ 55.45.	Obstructing Governmental Functions; Defined & Punished.	No Change
§ 55.50.	Damaging, Stealing or Receiving Stolen Government Generators, Tele-phones, or Emergency or Utility Equipment.	No Change
§ 55.51.	Receiving Stolen Government Generators, Telephones or Emergency Utility Equipment.	No Change
§ 55.60.	Public Water, Unlawful Use During Period of Emergency.	Amend
§ 55.65.	Failure to File a Complete Partial-Birth Abortion and Abortion Report.	No Change
Chapter 70	**Miscellaneous Crimes**	
§ 70.10.	Title.	No Change
§ 70.15.	Definitions.	Amend
§ 70.20.	Animal Neglect.	Amend
§ 70.25.	Animal Abuse.	Amend
§ 70.30.	Aggravated Animal Abuse.	No Change
§ 70.35.	Animal Fighting.	Amend
§ 70.40.	Sexual Assault of an Animal.	No Change
§ 70.45.	Bodily Alterations, Disablements, or Removals.	No Change
§ 70.50.	Animal Abandonment.	Amend
§ 70.55.	Failure of a Motorist to Render Aid to an Injured Animal.	Repeal
§ 70.60.	Leaving Animals Unattended in Motor Vehicles; Penalty; Authority of Officers.	Amend
§ 70.65.	Defenses; Exceptions.	Amend
§ 70.70.	Euthanasia Procedures.	No Change
§ 70.75.	Pre-Trial Provisions.	No Change
§ 70.80.	Sentencing Provisions.	Amend
§ 70.85.	Civil Right of Action for the Wrongful Injury or Death of an Animal.	No Change
§ 70.210.	Declaration of Policy.	No Change
§ 70.220.	Definitions.	No Change
§ 70.230.	Unlawful Practices.	No Change
§ 70.240.	Exemptions.	No Change
§ 70.250.	Procedure.	No Change
§ 70.260.	Other Remedies.	No Change
§ 70.270.	Penalties.	No Change
§ 70.310.	Title.	No Change
§ 70.320.	Intoxication of Persons Under the Age of Twenty-One.	Amend
§ 70.330.	Possession of Cannabis by Persons Under Twenty-Years of Age.	Amend
§ 70.410	Tattoos, Brands, Scarifications and Piercings; Minors; Violation; Classification; Anesthesia; Defense; Definition.	No Change
§ 70.420.	Jet Ski Operation, Tumon Bay.	Amend
§ 70.430.	Unlawful Use of Telephone; Defined & Punished.	Repeal
§ 70.440.	Revealing Expunged Record Prohibited.	No Change
§ 70.450.	Blacklisting Employees.	Repeal
Chapter 71	**The Guam Gun-Free School Zone Act of 2005**	
§ 71.10.	Title.	No Change
§ 71.20.	Definitions.	Amend
§ 71.30.	Person Not Allowed to Possess Firearms.	Amend
§ 71.40.	Prohibition on Discharge of Firearm.	Amend
§ 71.50.	Firearms Prohibited on University or College Property.	Amend
§ 71.60.	Punishment.	Amend
§ 71.61.	Information for Sentencing.	Amend
§ 71.70.	What Constitutes a Loaded Firearm.	Repeal
§ 71.80.	Notice.	Amend
§ 71.81.	Not Applicable to Peace Officers and Military.	Amend
§ 71.82.	Not Applicable to Security Guards.	Amend
§ 71.83.	Not Applicable to Existing Shooting Ranges.	Amend

CHAPTER AND SECTION	TITLE	STATUS
§ 71.90.	Severability.	No Change
Chapter 86	**Compensation for Damages from Criminal Activities**	Repealed and Reenacted
Chapter 87	**Victim Notification**	Repealed and Reenacted
Chapter 90	**Corrections**	
§ 90.10.	Definitions.	Amend
§ 90.15.	General Duties of Department of Corrections.	Amend
§ 90.16.	Minimum Qualifications for Department of Corrections Officers.	Amend
§ 90.16.1.	Annual Corrections Officer Recruits Training Cycle.	Amend
§ 90.20.	Corrections Advisory Council Established.	Repeal
§ 90.25.	Director to Establish Prisons.	Amend
§ 90.26	Correctional Medical Facilities	Add New
§ 90.27.	Prison May Serve as Overflow Lock-Up.	Amend
§ 90.30.	Rules, Regulations & Disciplinary Rules Authorized.	Amend
§ 90.35.	Director to Control Organization of DOC; Appoint Staff.	Amend
§ 90.40.	General Duties of Director of Corrections.	Amend
§ 90.41.	Inmate Commissary.	Amend
§ 90.42.	Operation of Inmate Commissary.	Amend
§ 90.43	Corrections Commissary Fund.	Amend
§ 90.44.	Inmate Phone Access Act of 2021.	Amend
§ 90.45.	Authorization to Transfer Prisoners to Federal Correctional Institutions.	Amend
§ 90.46.	Emergency Transfers of Inmates.	No Change
§ 90.47.	Disciplinary Transfer of Inmates.	Amend
§ 90.47.01	Same: Disciplinary Transfer.	Amend
§ 90.47.02	Same: Non-disciplinary Transfer.	Amend
§ 90.47.03	Same: Procedures for Transfers.	Amend
§ 90.47.04	Same: Basis of Determination	Repeal
§ 90.47.05	Same: Appeal from Determination.	Repeal
§ 90.48.	~~Nursing Mothers Accommodations.~~ Transfers Pursuant to Treaty.	Amend/Moved
§ 90.49.	Corrections Revolving Fund.	Amend
§ 90.50.	Purpose of Article.	No Change
§ 90.51.	Compliance to §§ 90.46-90.48.	Amend
§ 90.52.	Compact Stated.	No Change
§ 90.54.	Director, Department of Corrections May Commit Prisoner Outside of Guam Pursuant to Terms of Compact.	No Change
§ 90.56.	All Agencies of Government of Guam Shall Enforce Compact.	No Change
§ 90.58.	Director, Department of Corrections May Hold Hearings as Required by Compact.	No Change
§ 90.60.	Governor May Contract to Implement Compact.	No Change
§ 90.62.	Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.	No Change
§ 90.64.	Severability.	No Change
§ 90.66.	Effective Date.	No Change
§ 90.80.	Purpose of Article: Title.	Repeal
§ 90.82.	Governor to Execute Compact: Compact Stated.	Repeal
§ 90.84.	Chief Judge of Superior Court to be Compact Administrator: Duties.	Repeal
§ 90.90.	Prison Industries, Established.	Amend
§ 90.91.	Prison Industries Revolving Fund.	Amend
§ 90.201.	Creation.	No Change
§ 90.202.	Functions and Duties.	No Change
§ 90.203.	Recruitment.	No Change
§ 90.204.	Training, Equipping, and Maintenance of Records.	No Change
§ 90.205.	Reservist: Authority.	No Change
§ 90.206.	Same: Allowance.	No Change
§ 90.207.	Authorization for Full-Time CCRP Officers.	No Change
§ 90.208.	Same: Eligibility and Oath.	No Change
§ 90.209.	Rules and Regulations: Recommendations.	No Change

CHAPTER AND SECTION	TITLE	STATUS
§ 90.301.	Legislative Findings and Policy.	No Change
§ 90.302.	Definitions.	No Change
§ 90.303.	Authorization to Enter into Long-Term Leases.	No Change
§ 90.304.	Identification of Projects and Procurement.	No Change
§ 90.305.	Responsibility of Contractor/Developer.	No Change
§ 90.306.	Contractual Safeguards.	No Change
§ 90.307.	Assignments.	No Change
§ 90.308.	Pledge or Reservation of Revenues.	No Change
§ 90.309.	Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.	No Change
§ 90.310.	Prison IT, Building, and Security Management System.	No Change
§ 90.311.	Utilities and Routine Maintenance and Repair.	No Change
§ 90.312.	Maintenance Fund.	No Change
§ 90.313.	Rules and Regulations.	No Change
§ 90.314.	Financial Plan Required.	No Change
Chapter 91	**Infant Child's Right to Life Act**	
§ 91.01.	Title.	No Change
§ 91.02.	Legislative Findings and Purpose.	No Change
§ 91.03.	Definitions.	No Change
§ 91.04.	Requirements and Responsibilities.	No Change
§ 91.05.	Criminal Penalties.	No Change
§ 91.06.	Civil and Administrative Action.	No Change

ATTACHMENT 3

APPROVED RECOMMENDATIONS IN BLACKLINE FORMAT

ATTACHMENT 3

APPROVED RECOMMENDATIONS

CHAPTER 1
PRELIMINARY PROVISIONS: DEFINITIONS

ARTICLE 1
PRELIMINARY PROVISIONS; CONSTRUCTION

§ 1.10. Short Title.

This ~~Code~~ Title 9 of the Guam Code Annotated shall be known as the Guam Criminal ~~and Correctional~~ Code.

CLRC COMMENT: Non-substantive clarification and for consistency with the first section of Title 8 GCA.

~~**§ 1.12. Severability.**~~

~~If any provisions of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.~~

CLRC COMMENT: Repeal and reenact as a new § 1.12 (Rules of Construction) with severability included as subsection (g).

§ 1.12. Rules of Construction.

Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.

(a) Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.

(b) Whenever any reference is made to any portion of this Code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

(c) The present tense includes the past and future tenses; and the future, the present.

(d) The masculine gender includes the feminine and neuter.

(e) The singular number includes the plural; and the plural, the singular.

(f) Shall is mandatory and may is permissive.

(g) If any provisions of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

CLRC COMMENT: Reenacted § 1.12 consolidating the other rules of construction sections of this chapter: § 1.12 (Severability), § 1.34 (Rules of Construction), § 1.36 (Headings), § 1.38 (Amendments Included), § 1.42 (Tenses), § 1.44 (Gender), § 1.46 (Number), § 1.48 (Shall and May).

§ 1.14. ~~Purpose for Defining Offenses~~ Purposes, Principles of Construction.

(a) The general purposes of the provisions governing the definition of offense are:

(1) to forbid, prevent, and condemn conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;

(2) to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentence authorized, the rehabilitation of those convicted, and their confinement when required in the interest of public protection;

(3) to subject to public control persons whose conduct indicates that they are disposed to commit offenses;

(4) to give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;

(5) to differentiate on reasonable grounds between serious and minor offenses; and

(6) to define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault.

(b) The general purposes of the provisions governing the sentencing of offenders are:

(1) to prevent and condemn the commission of offenses;

(2) to promote the correction and rehabilitation of offenders;

(3) to assure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protections;

(4) to safeguard offenders against excessive, disproportionate, or arbitrary punishment;

(5) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;

(6) to differentiate among offenders with a view to a just individualization in their treatment; ~~and~~

(7) to advance the use of generally accepted scientific methods and knowledge in sentencing offenders~~.~~;

(8) to promote restitution to victims;

(9) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and

(10) to impose sentences no more severe than necessary to achieve the societal purposes for which they are authorized.

(c) The provisions of this Code shall be construed according to the fair import of their terms, but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by this Code shall be exercised in accordance with the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.

CLRC COMMENT: Non-substantive clarification of title from source MPC § 1.02. Added subsection (b)(8) is from New Jersey and promotes restitution to victims. Added subsection (b)(9) is from the United States Code and promotes educational, vocational and medical care of inmates. Added subsection (b)(10) safeguards against disproportionate punishment.

§ 1.16. Territorial Applicability.

(a) Except as otherwise provided in this Section, a person may be convicted under the law of ~~this Territory~~ Guam of an offense committed by his own conduct or the conduct of another for which he is legally accountable if;

(1) he conduct which is an element of the offense or the result which is such an element occurs within ~~this Territory~~ Guam;

(2) conduct occurring outside the Territory is sufficient under the law of ~~this Territory~~ Guam to constitute an attempt to commit an offense within ~~the Territory~~ Guam;

(3) conduct occurring outside ~~the Territory~~ Guam is sufficient under the law of ~~this Territory~~ Guam to constitute a conspiracy to commit or offense within ~~the Territory~~ Guam and an overt act in furtherance of such conspiracy occurs within ~~the Territory~~ Guam;

(4) conduct occurring within ~~the Territory~~ Guam establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which is also an offense under the law of ~~this Territory~~ Guam.

(5) the offense consists of the omission to perform a legal duty imposed by the law of ~~this Territory~~ Guam with respect to domicile, residence, or a relationship to a person, thing, or transaction in ~~the Territory~~ Guam; or

(6) the offense is based on a statute of ~~this Territory~~ Guam which expressly prohibits conduct outside ~~the Territory~~ Guam when the conduct bears a reasonable relation to a legitimate interest of ~~this Territory~~ Guam and the person knows or should know that his conduct is likely to affect that interest.

(b) ~~Paragraph (1) of~~ Subsection (a)(1) does not apply when either causing a specified result or an intent to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in

another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(c) ~~Paragraph (1) of~~ Subsection (a)(1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside ~~the Territory~~ Guam which would not constitute an offense if the result had occurred there, unless the person intentionally or knowingly caused the result within ~~the Territory~~ Guam.

(d) When the offense is homicide, either death of the victim or the bodily impact causing death constitutes a "result," within the meaning of ~~Paragraph (1) of S~~subsection (a)(1) and if the body of a homicide victim is found within ~~the Territory~~ Guam, it is presumed that such result occurred within ~~the Territory~~ Guam.

(e) ~~the Territory~~ Guam includes the land and water and the air space above such land and water with respect to which ~~the Territory~~ Guam has legislative jurisdiction.

(f) Notwithstanding that territorial jurisdiction may be found under this Section, the court may dismiss, hold in abeyance for up to six months, or with the permission of the defendant, place on an inactive list a criminal prosecution under the law of this Territory where it appears that such action is in the interests of justice because the defendant is being or is likely to be prosecuted for an offense based on the same conduct in another jurisdiction and ~~the Territory~~ Guam's interest will be adequately served by a prosecution in the other jurisdiction.

CLRC COMMENT: Amendments for consistency with 1 GCA § 420. Other amendments are for clarification of citations.

§ 1.18. Classes of Crimes.

(a) An offense defined by this Code or by any other statute of ~~this Territory~~ Guam, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors or petty misdemeanors.

(b) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which, apart from an extended term, is in excess of one year.

(c) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto.

(d) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(e) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto or if it is defined by a statute other than this Code which now provides that person convicted thereof may be sentenced to imprisonment for a maximum term of less than one year.

(f) An offense defined by this Code or by any other statute of ~~this Territory~~ Guam constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(g) An offense defined by any statute of ~~this Territory~~ Guam other than this Code shall be classified as provided in this Section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

CLRC COMMENT: Amendments for consistency with 1 GCA § 420.

§ 1.19. Felonies Defined and Classified.

(a) Felonies defined by this Code are classified, for the purpose of sentence, into three degrees, as follows:

(1) felonies of the first degree;

(2) felonies of the second degree;

(3) felonies of the third degree.

Any crime declared to be a felony, without specification of degree, is of the third degree.

(b) Notwithstanding any other provision of law, a felony defined by any statute of Guam other than this Code shall constitute for the purpose of sentence a felony of the third degree.

CLRC COMMENT: Amendments for consistency with 1 GCA § 420.

§ 1.20. Relationship of Code to Other Laws; Contempts, Penalties and Remedies.

(a) No conduct constitutes an offense unless it is a crime or violation under this Code or other statute of Guam.

(b) The provisions of this Code shall apply to offenses defined by other statutes, unless otherwise expressly provided or unless the context otherwise requires.

(c) Nothing in this Code shall affect the power of a court to punish contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(d) Nothing in this Code shall bar or suspend any liability for damages, penalty, forfeiture, or other remedy otherwise authorized by law to be recovered or enforced in any civil action or proceeding, for any conduct punishable by this Code.

CLRC COMMENT: Amendment for consistency with 1 GCA § 420.

§ 1.22. Prosecution for Conduct Which Constitutes More Than One Offense.

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other as defined in 8 GCA § 105.58 ~~of the Criminal Procedure Code~~;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other,

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

CLRC COMMENT: Non-substantive citation clarification.

§ 1.24. Double Jeopardy. Same Offense.

A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(b) The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this Subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of fact. Termination under any of the following circumstances is not improper:

(1) the defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination;

(2) the trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed; or

(3) the trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity.

CLRC COMMENT: Non-substantive typographical correction.

§ 1.26. Double Jeopardy. Different Offense.

A prosecution of a defendant for a violation of a different provision of the statutes or based on different facts than a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is for:

(1) any offense of which the defendant could have been convicted on the first prosecution;

(2) any offense of which the defendant should have been tried on the first prosecution under ~~Subsection (b) of § 65.30 of the Criminal Procedure Code~~ 8 GCA § 65.30(b) unless the court ordered a separate trial of the charge of such offense; or

(3) the same conduct, unless (A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil, or (B) the second offense was not consummated when the former trial began.

(b) The former prosecution was terminated, after the complaint was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(c) The former prosecution was improperly terminated, as improper termination is defined in § 1.24, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

CLRC COMMENT: Non-substantive citation clarification.

§ 1.28. Concurrent Jurisdiction. When a Bar to Prosecution.

When conduct constitutes an offense within the concurrent jurisdiction of Guam and of the United States or any state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in Guam under the following circumstances:

(a) the first prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is based on the same conduct, unless

(1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or

(2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or

(3) the second offense was not consummated when the former trial began; or

(b) the former prosecution was terminated after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

CLRC COMMENT: No change.

§ 1.30. Former Prosecutions. When Not a Bar to Present Prosecution.

A prosecution is not a bar within the meaning of §§ 1.24, 1.26 and 1.28 under ~~either~~ any of the following circumstances:

(a) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense tried in that court; or

(b) The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a petition for post-conviction relief or similar process, except that any bar as to reprosecution for a greater inclusive offense created by ~~Subsection (a) of~~ § 1.24(a) shall apply.

(c) The former prosecution resulted in a plea of guilty or nolo contendere which was held invalid in an appeal under 8 GCA § 130.15(e) and the defendant may be retried as if the former plea had not been entered.

CLRC COMMENT: Non-substantive grammatical correction and citation clarification.

§ 1.32. [Reserved.]

[Reserved.]

CLRC COMMENT: No change.

~~**§ 1.34. Rules of Construction.**~~

~~Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~**§ 1.36. Headings.**~~

~~Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~**§ 1.38. Amendments Included.**~~

~~Whenever any reference is made to any portion of this Code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

§ 1.40. [Reserved.]

[Reserved.]

CLRC COMMENT: No change.

~~**§ 1.42. Tenses.**~~

~~The present tense includes the past and future tenses; and the future, the present.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~**§ 1.44. Gender.**~~

~~The masculine gender includes the feminine and neuter.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12

~~**§ 1.46. Number.**~~

~~The singular number includes the plural; and the plural, the singular.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~**§ 1.48. Shall and May.**~~

~~Shall is mandatory and may is permissive.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

§ 1.50. Military Authority.

This Code does not affect any authority otherwise conferred by law upon any court-martial or other military authority or officer to prosecute and punish persons violating such codes or laws.

CLRC COMMENT: No Change.

ARTICLE 2
DEFINITIONS

§ 1.60. General Definitions Applicable to Entire Title.

Unless otherwise expressly stated:

~~(a) Chapter means a chapter of this Title.~~

~~(b) Article means an article of the chapter in which that term occurs.~~

~~(c) Section means a section of this Code.~~

~~(d) Subsection means a subsection of the section in which that term occurs.~~

~~(e) Paragraph means a paragraph of the subsection in which that term occurs.~~

~~(f)~~ Person means any natural person, partnership, firm, association, corporation or other legal entity.

CLRC COMMENT: Repeal unnecessary definitions.

§ 1.70. Peace Officer.

As used in this Code, peace officer has the meaning provided by 8 GCA § 5.55 of the Criminal Procedure Code.

CLRC COMMENT: No Change.

~~**§ 1.80. Territory.**~~

~~As used in this Code, Territory means the territory of Guam.~~

CLRC COMMENT: Amendment for consistency with 1 GCA § 420.

CHAPTER 4

GENERAL PRINCIPLES OF LIABILITY

§ 4.10. Conduct to Include Voluntary Act or Omission.

A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

CLRC COMMENT: No change.

§ 4.15. Voluntary Act Defined.

(a) A *voluntary act* is one performed consciously as a result of effort or determination.

(b) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control of it for sufficient time to have been able to terminate his control.

CLRC COMMENT: No change.

§ 4.20. Liability for Omission Limited.

A person is not guilty of an offense if his liability is based solely on an omission unless the law defining the offense expressly so provides, or a duty to perform the act is otherwise imposed by law.

CLRC COMMENT: No change.

§ 4.25. Culpability.

Except as provided in § 4.45, a person is not guilty of a crime unless he acts intentionally, knowingly, recklessly or with criminal negligence, as the law may require, with respect to the conduct, the result thereof or the attendant circumstances which constitute the material elements of the crime.

CLRC COMMENT: No change.

§ 4.30. Culpability Defined.

(a) A person acts intentionally, or with intent, with respect to his conduct or to a result thereof when it is his conscious purpose to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to his conduct or to attendant circumstances when he is aware of the nature of his conduct or that those circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is practically certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to attendant circumstances or the result of his conduct when he acts in awareness of a substantial risk that the circumstances exist or that his conduct will cause the result and his disregard is unjustifiable and constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to attendant circumstances or the result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or that his conduct will cause the result and his failure to be aware of the risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

CLRC COMMENT: No change.

§ 4.35. Culpability Applied to Elements of Offense.

(a) If the definition of an offense prescribes a culpable mental state but does not specify the conduct, attendant circumstances or result to which it applies, the prescribed culpable mental state shall apply to each such material element.

(b) If the definition of a crime prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(c) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of an offense unless the statue clearly so provides.

CLRC COMMENT: No change.

§ 4.40. Culpable Mental State Generally Required.

Except as provided in § 4.45, if the definition of a crime does not expressly prescribe a culpable mental state, a culpable mental state is nonetheless required and is established only if a person acts intentionally, knowingly or recklessly.

CLRC COMMENT: No change.

§ 4.45. ~~Same~~ Culpable Mental State: When Inapplicable.

The culpable mental state requirements of § 4.25 and § 4.40 do not apply if the offense is a violation or if the law defining the offense clearly indicates purpose to dispense with any culpable mental state requirement.

CLRC COMMENT: Non-substantive amendment to section title.

§ 4.50. Causation Established and Defined.

(a) An element of an offense which requires that the defendant have caused a particular result is established when his conduct is an antecedent but for which the result would not have occurred, and,

(1) if the offense requires that the defendant intentionally or knowingly caused the result, that the actual result, as it occurred,

(A) is within the purpose of contemplation of the defendant, whether the purpose or contemplation extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that designed or contemplated and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(2) if the offense requires that the defendant recklessly or negligently cause the result, that the actual result, as it occurred,

(A) is within the risk of which the defendant was or should have been aware, whether that risk extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that recklessly or negligently risked and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(3) if the offense imposes strict liability, that the actual result, as it occurred, is a ~~probably~~ probable consequence of the defendant's conduct.

(b) A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed, contemplated or risked is that a different person or property was injured or affected or that a less serious or less extensive injury or harm occurred.

CLRC COMMENT: Non-substantive amendment to section

§ 4.55. Guilt Established by Causing or Aiding Innocent Party in Commission of Crime.

A person is guilty of an offense if, acting with the culpability required for the offense, he causes or aids an innocent or non-responsible person to engage in conduct prohibited by the definition of the offense.

CLRC COMMENT: No change.

§ 4.60. Guilt Established by Complicity.

A person is guilty of an offense if, with the intention of promoting or assisting in the commission of the offense, he induces or aids another person to commit the offense. If the definition of the offense includes lesser offenses, the offense of which each person shall be guilty shall be determined according to his own culpable mental state and to those aggravating or mitigating factors which apply to him.

CLRC COMMENT: No change.

§ 4.65. Criminal Facilitation Established and Punished.

A person is guilty of criminal facilitation when, knowing that another person intends to engage in conduct which in fact constitutes a crime, he knowingly furnishes substantial assistance to him.

Criminal facilitation of a felony of the first degree is a felony of the third degree.

Criminal facilitation of a felony of the second or of the third degree is a misdemeanor.

Criminal facilitation of a misdemeanor or petty misdemeanor is a petty misdemeanor.

CLRC COMMENT: No change.

§ 4.70. Criminal Liability for Acts of Another: ~~Non-Availability of~~ Certain Defenses Not Available.

In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is no defense that:

(a) the offense can be committed only by a particular class of persons to which the defendant does not belong; or

(b) the other person has legal immunity from prosecution, or has not been prosecuted for or convicted of an offense based upon the conduct in question, or has previously been acquitted.

CLRC COMMENT: Non-substantive amendment to section title.

§ 4.75. ~~Same~~ Criminal Liability for Acts of Another: Defenses Available.

Unless otherwise provided by law, in any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is a defense that:

(a) the defendant was a victim of the offense; or

(b) under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant withdrew from participation in the offense and made a reasonable effort to stop the commission of the offense.

CLRC COMMENT: Non-substantive amendment to section title.

§ 4.80. Criminal Liability of Corporations.

(a) A corporation may be convicted of:

(1) any offense committed in furtherance of its affairs on the basis of conduct performed, authorized, requested, commanded or recklessly tolerated by (A) the board of directors; (B) a managerial agent acting in the scope of his employment; or (C) any other person for whose conduct the statute defining the offense provides criminal responsibility;

(2) any offense consisting of a failure to perform a duty imposed by law; or

(3) any petty misdemeanor or violation committed by an agent of the corporation acting in the scope of his employment in furtherance of its affairs.

(b) It is no defense that an individual upon whose conduct liability of the corporation is based has not been prosecuted or convicted, has been convicted of a different offense or is immune from prosecution.

(c) As used in this Section, managerial agent means an agent of the corporation having duties of such responsibility that his conduct may fairly be found to represent the policy of the corporation.

CLRC COMMENT: No change.

CHAPTER 16

CRIMINAL HOMICIDE

§ 16.10. Definitions Applicable to Chapter.

As used in this Chapter:

(a) *Human Being* means a person who has been born and is alive;

(b) *Bodily Injury* means physical pain, illness, unconsciousness or any impairment of physical condition;

(c) *Serious Bodily Injury* means bodily injury which creates: serious permanent disfigurement; a substantial risk of death or serious, permanent disfigurement; severe or intense physical pain; or protracted loss or impairment of consciousness or of the function of any bodily member or organ;

(d) *Deadly Weapon* means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to the defendant to be capable of producing death or serious bodily injury.

CLRC COMMENT: No change.

§ 16.20. Criminal Homicide Defined.

(a) A person is guilty of criminal homicide if he causes the death of another human being:

(1) intentionally and with premeditation; or

(2) intentionally; or

(3) knowingly; or

(4) recklessly; or

(5 by criminal negligence.

(b) *Criminal homicide* is aggravated murder, murder, manslaughter or negligent homicide.

CLRC COMMENT: No change.

§ 16.30. Aggravated Murder Defined.

(a) Criminal homicide constitutes aggravated murder when:

(1) it is committed intentionally with premeditation; or

(2) it is committed during the commission or attempt to commit any felony defined in Chapters 22, 25, 31, 34, 37, 40 or 58 of this Title; or

(3) death is directly caused by the illegal use of a Schedule I or Schedule II Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old ~~(Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substances directly causes the death of such minor child, is guilty of aggravated murder. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.)~~; or

(4) Death of a minor child under the age of eighteen (18) is directly caused by a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title by a person who is not licensed to prescribe or dispense the substance; or

~~(4)~~ (5) it is committed upon the orders of another person. Such person giving the order is also guilty of aggravated murder.

(b) Aggravated murder is a felony of the first degree, but a person convicted of aggravated murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, further, that any person convicted of aggravated murder shall *not* be eligible for parole, work release, educational programs outside the confines of prison nor shall his sentence be suspended.

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 16.40. Murder Defined.

(a) Criminal homicide constitutes murder when:

(1) it is committed intentionally or knowingly; or

(2) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life; or

(3) death is directly caused by the illegal use of a Schedule I or Schedule II Controlled Substance, defined by Chapter 67 of this Title, to any person. ~~Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance directly causes the death of such person, is guilty of murder. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts~~; or

(4) Death of a person who is eighteen (18) years or older is the result of a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title.

(b) Murder is a felony of the first degree, but a person convicted of murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, however, that any person convicted of murder shall be eligible for parole after serving fifteen (15) years as provided in § 80.72 of this Title and no part of said sentence shall be suspended; provided, further, that any person convicted of murder shall also *not* be eligible for work release or educational programs outside the confines of prison.

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 16.50. Manslaughter Defined and Classified.

(a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse (The reasonableness of such explanation or excuse ~~shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.)~~; or

(3) death is indirectly or proximately caused, such as an accident, by the illegal use of a Schedule I or Schedule II Controlled Substance, as defined by Chapter 67 of this Title, to a person under the influence of such controlled substance; or ~~. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance indirectly or proximately causes the death of such person, is guilty of manslaughter. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.~~

(4) death of a person who is eighteen (18) years or older results from a knowing or willing transfer or sale of a Schedule I or Schedule II controlled substance, where such controlled substance proximately causes the death of such person.

(b) The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.

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

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 16.60. Negligent Homicide Defined and Classified.

(a) Criminal homicide constitutes negligent homicide when it is committed by criminal negligence.

(b) Negligent homicide is a felony of the third degree.

CLRC COMMENT: No change.

CHAPTER 17
UNBORN VICTIMS OF VIOLENCE ACT

CLRC COMMENT: No change.

§ 17.01. Title.

This Act may be cited or referred to as "The Unborn Victims of Violence Act of 2016."

CLRC COMMENT: No change.

§ 17.02. Legislative Statement and Intent.

(a) *I Liheslaturan Guåhan* understands that the physical harm or death of an expectant woman could equally result in the physical harm and death to the unborn child in her womb. For the woman who desires to carry and care for her unborn child to term, the protection and safety of the living being in her womb is something she should not have to worry about. To this statement, former President George W. Bush once expressed, "Any time an expectant mother is a victim of violence, two lives are in the balance, each deserving protection, and each deserving justice."

(b) *I Liheslaturan Guåhan* finds that "The Unborn Victims of Violence Act of 2016" (Act) is a step toward protecting an expectant mother and her unborn child, and recognizes that an unborn child is a legal victim if he or she is injured or killed during the commission of crimes of violence.

(c) *I Liheslaturan Guåhan* believes and further recognizes that while an expectant mother has a legal right to determine the fate of her unborn child, she should also be assured that any harm to her unborn child caused from unwarranted and unexpected harm directed at her will result in additional criminal sanctions against the responsible person(s).

CLRC COMMENT: No change.

§ 17.03. Definitions.

For the purposes of this Chapter, the following terms are defined to mean:

(a) person shall not include the pregnant woman whose unborn child is harmed;

(b) unborn child shall mean a child in utero, and the term "child in utero" or "child, who is in utero" means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

CLRC COMMENT: No change.

§ 17.04. Application.

(a) This Chapter shall not apply to acts that cause bodily harm to an unborn child if those acts were committed during any legal abortion, in accordance with Guam law.

(b) This Chapter shall not apply to acts that were committed under usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

CLRC COMMENT: No change.

§ 17.05. Murder of an Unborn Child.

(a) A person commits the offense of murder of an unborn child if, in performing acts which cause the death of an unborn child without lawful jurisdiction, the person:

(1) either intended to cause the death of, or cause serious bodily injury to, the pregnant woman or her unborn child, or knew that such acts would cause death or serious bodily injury to the pregnant woman or her unborn child; or

(2) commits such acts recklessly under circumstances manifesting extreme indifference to the value of the life of the pregnant woman or her unborn child.

(b) The penalty for murder of an unborn child shall be the same as the penalty for murder defined in Chapter 16 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 17.06. Manslaughter of an Unborn Child.

(a) A person who kills an unborn child without lawful justification commits manslaughter of an unborn child if, at the time of the killing, the person was acting under a sudden and intense passion resulting from serious provocation by another who the offender endeavors to kill, but the person negligently or accidentally causes the death of the unborn child.

(b) Manslaughter of an unborn child is a felony of the first degree and is punishable to the same extent and manner as the offense of manslaughter defined in Chapter 16 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 17.07. Aggravated Assault of an Unborn Child.

(a) A person commits aggravated assault of an unborn child when, in committing assault against a pregnant woman, he or she causes serious bodily injury to an unborn child.

(b) Aggravated assault of an unborn child is punishable to the same extent and manner as the offense of aggravated assault in the second degree defined in Chapter 19 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 17.08. Assault of an Unborn Child.

(a) A person commits assault of an unborn child if he or she, without legal justification and by any means, commits assault on a pregnant woman as defined in § 19.30 of Chapter 19, Title 9, Guam Code Annotated.

(b) It is not a defense that no injury was caused to the unborn child as a result of the assault.

(c) Assault of an unborn child is punishable to the same extent and manner as the offense of assault defined in Chapter 19 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 17.09. Knowledge Not a Defense.

An offense committed under this Act does not require proof that:

(a) the person committing the offense had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(b) the person committing the offense did not intend to cause the death of, or bodily injury to, the unborn child.

CLRC COMMENT: No change.

§ 17.10. No Prohibition.

The provisions of this Act shall not be construed to prohibit the prosecution of any person under any other provision of law.

CLRC COMMENT: No change.

CHAPTER 19
ASSAULT, RECKLESS ENDANGERING, TERRORIZING

§ 19.10. General Definitions.

As used in this Chapter, the terms bodily injury, serious bodily injury and deadly weapon have the meanings provided by § 16.10.

CLRC COMMENT: No change.

§ 19.20. Aggravated Assault; Defined & Punished.

(a) A person is guilty of aggravated assault if he either recklessly causes or attempts to cause:

(1) serious bodily injury to another in circumstances manifesting extreme indifference to the value of human life;

(2) serious bodily injury to another;

(3) bodily injury to another with a deadly weapon.

(b) Aggravated assault under Paragraph (1) of Subsection (a) is a felony of the second degree; aggravated assault under Paragraphs (2) or (3) or Subsection (a) is a felony of the third degree; provided that any person convicted of aggravated assault shall not be eligible for work release or educational programs outside the confines of prison.

CLRC COMMENT: No change.

§ 19.30. Assault; Defined & Punished.

(a) A person is guilty of assault if he:

(1) either recklessly causes or attempts to cause bodily injury to another;

(2) recklessly uses a deadly weapon in such a manner as to place another in danger of bodily injury; or

(3) by physical menace intentionally puts or attempts to put another in fear of imminent bodily injury.

(b) (1) An assault against a peace officer who is performing his official duties as a peace officer is a felony of the third degree if the perpetrator knew *or* should have known that the victim was a peace officer.

(A) In any assault against a peace officer, the jury *shall*, with any finding of guilty, also return a finding as to whether the perpetrator had actual knowledge that the victim was a peace officer.

(B) *If* the jury finds that the perpetrator had actual knowledge that the victim was a peace officer, the court *shall* impose a minimum sentence of one (1) year in prison without suspension, probation, parole, *or* work release.

(2) For purposes of this § 19.30, *peace officer* means one so defined in § 5.55, Title 8, Guam Code Annotated, and to also include those individuals serving in a volunteer law enforcement capacity within any government of Guam law enforcement entity.

(c) An assault committed by a peace officer on a person in his custody or control, without any provocation whatsoever and with the use of excessive force, is a felony of the third degree.

(d) An assault committed in a fight or scuffle entered into by mutual consent is a petty misdemeanor.

(e) Any other assault is a misdemeanor.

CLRC COMMENT: No change.

§ 19.40. Reckless Conduct; Defined & Punished.

(a) A person is guilty of reckless conduct if he:

(1) recklessly engages in conduct which unjustifiably places or may place another in danger of death or serious bodily injury;

(2) intentionally points a firearm at or in the direction of another, whether or not the defendant believes it to be loaded.

(b) Reckless conduct is a misdemeanor.

CLRC COMMENT: No change.

§ 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.

(b) Terroristic conduct is a felony of the third degree.

CLRC COMMENT: Punctuation change to clarify language.

§ 19.60. Terrorizing; Defined & Punished.

(a) A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, to any person and the natural and probable consequence of such a threat, is to place the person to whom the threat is communicated or the person threatened in reasonable fear that crime will be committed.

(b) Terrorizing is a felony of the third degree.

CLRC COMMENT: No change.

§ 19.69. Definitions.

Unless otherwise indicated, as used in § 19.70:

(a) *Harasses* or *harassment* means a knowing and willful course of conduct, whether physical, verbal, written, electronic, telephonic, via or by use of a computer, computer network, computer system, telephone network, data network, text message, instant message, or otherwise, directed at a specific person which alarms, annoys, or distresses the person, and which serves no legitimate purpose. Such course of conduct must be of a nature to cause a reasonable person to suffer substantial emotional distress, and must cause substantial emotional distress.

(b) *Course of conduct* means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Constitutionally and statutorily protected activity, including, but *not* limited to, picketing as a result of a labor dispute, is *not* included in this definition.

(c) *Credible threat* means any threat, physical or verbal, overtly or subtly manifested, constituting a threat with the intent and apparent ability to carry out the threat with the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. Such threatening advance must be against the life of, or a threat to cause bodily injury to, the person threatened or to a member of his or her immediate family.

(d) *Computer* means any electronic, magnetic, optical, electrochemical, *or* other high-speed data processing device performing logical, arithmetic, *or* storage functions, and includes all computer equipment connected *or* related to such a device in a computer system *or* computer network, but *shall not* include an automated typewriter or typesetter, a portable hand-held calculator, *or* other similar device.

(e) *Computer network* means two (2) or more computers or computer systems interconnected by communication lines, including microwave, electronic, or any other form of communication.

(f) *Computer system* means a set of interconnected computer equipment intended to operate as a cohesive system.

CLRC COMMENT: No change.

§ 19.70. Stalking.

(a) A person is guilty of simple stalking if he or she willfully, maliciously, and repeatedly, follows or harasses another person or ~~who~~ makes a credible threat with intent to place that person or a member of his or her immediate family in fear of death or bodily injury.

(b) A person is guilty of advanced stalking if he or she violates Subsection (a) of this Section when there is a temporary restraining order or an injunction or both or any other court order in effect prohibiting the behavior described in that Subsection against the same party.

(c) A person is guilty of advanced stalking if he or she violates Subsection (a) of this Section a second or subsequent time against the same victim, within seven (7) years of a prior conviction under that Subsection, and involving an harassment or a credible threat of violence, as defined in §19.69 of this Chapter.

(d) Simple stalking is a felony of the third degree.

(e) Advanced stalking is a felony of the second degree.

(f) This Section *shall not* apply to conduct which occurs during labor picketing.

CLRC COMMENT: Grammatical correction.

§ 19.80. Strangulation; Defined & Punished.

(a) A person is guilty of strangulation if he knowingly or intentionally, against the will of another, impedes the normal breathing or circulation of the blood of another by applying pressure to the throat or neck or by blocking the nose or mouth of another.

(b) Strangulation is a felony of the third degree; provided, that any person convicted of strangulation shall not be eligible for work release or educational programs outside the confines of prison.

CLRC COMMENT: No change.

§ 19.81. 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 of the third degree~~ misdemeanor.

CLRC COMMENT: Amend to reduce offense level from a felony to a misdemeanor. Recommend similar amendment to 9 GCA § 30.300 (Interfering with the Reporting of Family Violence) for consistency.

CHAPTER 22

KIDNAPPING AND RELATED OFFENSES

§ 22.10. General Definitions - Ref. § 16.10.

As used in this chapter, the terms bodily injury and serious bodily injury have the meanings provided by § 16.10.

CLRC COMMENT: No change.

§ 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 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.

(b) Kidnapping is a felony of the first degree unless the defendant voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree. In the case of kidnapping as a felony of the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years and may impose a maximum sentence of up to twenty-five (25) years; said minimum term shall not be suspended nor probation be imposed in lieu of such 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.

(c) A removal or confinement is unlawful within the meaning of this section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of fourteen (14) or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

CLRC COMMENT: No change.

§ 22.30. Felonious Restraint; Defined & Punished.

A person commits a felony of the third degree if he knowingly:

(a) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or

(b) holds another in a condition of involuntary servitude.

CLRC COMMENT: No change.

§ 22.35. Unlawful Restraint; Defined & Punished.

(a) A person commits the offense of unlawful restraint when he knowingly, without legal authority, detains another.

(b) Unlawful restraint, punishment for. Unlawful restraint is a misdemeanor.

CLRC COMMENT: No change.

§ 22.40. Child Stealing; Defined & Punished.

(a) A person is guilty of child stealing when he takes or keeps a child who is less than fourteen (14) years old and who is not his natural or adopted child with intent to conceal that child from his parent, legal guardian or other person having that child in his care or custody or under his control.

(b) This section shall not apply to a relative of a child who believes that taking or keeping that child is necessary to protect him from physical or emotional harm.

(c) Child stealing is a felony of the third degree.

CLRC COMMENT: No change.

§ 22.50. Custodial Interference; Defined & Punished.

(a) A person is guilty of custodial interference in the first degree if:

(1) Being a relative of the person, he knowingly takes or entices a person less than eighteen (18) years old from his lawful custody knowing that he has no right to do so and during the taking, subjects the person to serious bodily injury.

(b) A person is guilty of custodial interference in the second degree if:

(1) not being a relative of the person, he knowingly takes or entices a person less than eighteen (18) years old from his lawful custodian, knowing that he has no right to do so; or

(2) he knowingly takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or an institution.

(c) A person is guilty of custodial interference in the third degree if being a parent of a child and with knowledge of court order relating to the custody of that child, violates the court order and takes or keeps the child with intent to conceal him from his legal guardian or other person having that child in his care or custody or under his control.

(d) Custodial interference in the first degree is a felony of the second degree; custodial interference in the second degree is a felony of the third degree and custodial interference in the third degree is a misdemeanor.

CLRC COMMENT: No change.

§ 22.60. Criminal Intimidation, Defined & Punished.

(a) A person is guilty of criminal intimidation if he knowingly compels or induces another to do an act which the latter has a legal privilege not to do or to refrain from doing an act which the latter has a legal privilege to do by threatening to:

(1) commit any criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(4) take or withhold action as an official or to cause an official to take or withhold action.

(b) Criminal intimidation is a misdemeanor.

CLRC COMMENT: No change.

CHAPTER 25

SEXUAL OFFENSES

§ 25.10. Definitions.

(a) As used in this Chapter:

(1) "Actor" means a person accused of criminal sexual conduct;

(2) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act.

(A) A person who is mentally incapacitated or physically helpless as defined by this Chapter cannot consent to a sexual act.

(B) Corroboration of the victim's testimony is not required to show lack of consent.

(3) "Force" or "Coercion" includes, but is not limited to, any of the following circumstances:

(A) when the actor overcomes the victim through the actual application of physical force or physical violence;

(B) when the actor coerces the victim to submit by threatening to use force or violence on the victim and the victim believes that the actor has the present ability to execute these threats;

(C) when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person and the victim believes that the actor has the ability to execute this threat. As used in this Subsection, to retaliate includes threats of physical punishment, kidnapping, or extortion;

(D) when the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable; or

(E) when the actor, through concealment or by the element of surprise, is able to overcome the victim.

(4) "Intimate Parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being;

(5) "Mentally Impaired" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct;

(6) "Mentally Incapacitated" means

(A) that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent; or

(B) that a person is voluntarily under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct.

(7) "Physically Helpless" means that a person is

(A) unconscious,

(B) asleep,

(C) unable to withhold consent or to withdraw consent because of a physical condition, or

(D) for any other reason, is physically unable to communicate unwillingness to an act;

(8) "Personal Injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(9) "Sexual Contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification;

(10) "Sexual Penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required; and

(11) “Victim” means the person alleging to have been subjected to criminal sexual conduct

(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.

(14) “Cunnilingus” is the touching of the urethral opening, vaginal opening, or labia with the actor’s mouth.

(b) Whenever in this Chapter the criminality of conduct depends on a child's being below the age of fourteen (14), it is no defense that the defendant reasonably believed the child to be fourteen (14) or older. Whenever in this Chapter the criminality of conduct depends on a child's being below a specified age older than fourteen (14), it is an affirmative defense that the defendant reasonably believed the child to be of that age or above.

CLRC COMMENT: Amend to add new definitions of terms used in this Chapter.

§ 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:

(1) the victim is under fourteen (14) years of age;

(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;

(3) sexual penetration occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(A) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless; or

(B) the actor uses force or coercion to accomplish the sexual penetration.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration; and

(1) the actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the first degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.15(a) shall be sentenced to a minimum of fifteen (15) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole if the victim is twelve (12) years of age or older at the time that the crime was committed; or a minimum of twenty-five (25) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole if the victim is under the age of twelve (12) years old at the time that the crime was committed. The term imposed shall not be suspended, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of said minimum term; nor shall work release or educational programs outside the confines of prison be granted; nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such sentence shall include a special parole term of not less than life with mandatory lifetime monitoring by the Parole Office, in addition to such time of imprisonment.

(a) Any person convicted of criminal sexual conduct under § 25.15(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration, as defined in § 25.10 of this Chapter shall be sentenced to a minimum of twenty-five (25) years imprisonment and may be sentenced to life imprisonment without the possibility of parole. Said term

shall not be suspended as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

CLRC COMMENT: No change.

§ 25.20. Second Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(1) that other person is under fourteen (14) years of age;

(2) that other person 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, or is related by blood or affinity to the fourth degree to the victim, or is in a position of authority over the victim and the actor used this authority to coerce the victim to submit;

(3) sexual contact occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(A) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless; or

(B) the actor uses force or coercion to accomplish the sexual contact.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact; and

(7) the actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the second degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.20(a) shall be sentenced to a minimum of five (5) years to a maximum of fifteen (15) years imprisonment without the possibility of parole if the victim is twelve (12) years of age or older at the time that the crime was committed; or a minimum of ten (10) years to a maximum of twenty (20) years imprisonment if the victim is under the age of twelve (12) years old at the time that the crime was committed. The term imposed shall not be suspended, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of said minimum term; nor shall work release or educational programs outside the confines of prison be granted; nor shall parole be granted; nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such sentence shall include a special parole term of not less than life with mandatory lifetime monitoring by the Parole Office, in addition to such time of imprisonment.

(c) Any person convicted of criminal sexual conduct under § 25.20(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 shall be sentenced to a minimum of fifteen (15) years imprisonment and may be sentenced to life imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

CLRC COMMENT: No change.

§ 25.25. Third Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(1) that other person is at least fourteen (14) years of age and under sixteen (16) years of age;

(2) force or coercion is used to accomplish the sexual penetration; and

(3) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the third degree is a felony of the second degree.

(c) Any person previously convicted of criminal sexual conduct under § 25.25(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 of this Chapter shall be sentenced to ten (10) years imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

CLRC COMMENT: No change.

§ 25.30. Fourth Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exists:

(1) force or coercion is used to accomplish the sexual contact;

(2) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless;

(3) the victim is at least fourteen (14) years of age and under sixteen (16) years of age.

(b) Criminal sexual conduct in the fourth degree is a felony of the third degree, except, where the actor is a first time offender and the victim is eighteen (18) years of age or older, it shall be a misdemeanor.

CLRC COMMENT: No change.

§ 25.35. Assault with Intent to Commit Criminal Sexual Conduct.

Assault with intent to commit criminal sexual conduct involving penetration is a felony in a third degree.

CLRC COMMENT: No change.

§ 25.40. Victim's Testimony Need Not be Corroborated.

The testimony of a victim need not be corroborated in prosecutions under §§ 25.15 through 25.35.

CLRC COMMENT: No change.

§ 25.45. Resistance Not Required.

A victim need not resist the actor for a proper prosecution under §§ 25.15 through 25.35.

CLRC COMMENT: No change.

CHAPTER 25A

SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY

ARTICLE 1
ELECTRONIC DISPLAY AND ENTICEMENT

§ 25A101. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that there is a critical need to clearly and explicitly define material that is obscene, material that is pornographic for minors and child pornography, as well as to update Guam's laws to protect children from internet predators. The internet is arguably the most important learning tool of the Twenty-first (21st) Century. Unfortunately, the same internet also poses one of the greatest threats to child safety.

It is the intent of *I Liheslatura* to ensure that our laws are strong enough to adequately protect Guam's children from online predators and child pornography and to severely punish the offenders.

CLRC COMMENT: No change.

§ 25A102. Indecent Electronic Display to a Child.

(a) Any person who intentionally masturbates or intentionally exposes the genitals of him or herself, or of another, in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service, and who knows or should know or has reason to believe that the transmission is viewed on a computer or other device capable of electronic data storage or transmission, by:

(1) a minor known by the person to be under the age of eighteen (18) years;

(2) 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

(3) another person who represents him or herself to be under the age of eighteen (18) years is guilty of indecent electronic display to a child.

(b) Indecent electronic display to a child is a Third Degree Felony.

~~(c) 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.~~

CLRC COMMENT: Amend § 25A102 (c), 25A103 by deleting the law enforcement exception from each and having a new section that the law enforcement exception applies to all offense conduct in Chapter 25A.

§ 25A103. 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~~

(B) with another person who represents him or herself to be under the age of eighteen (18) years,

(2) with the intent to promote or facilitate the commission of an unlawful sexual act or sexual offense in violation of Guam law, or another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, is guilty of electronic enticement of a child as a Third Degree Felony.

(b) Electronic enticement of a child under this Section is a Third Degree Felony.

(c) Each separate use of a computer online service, internet service, or any other device capable of electronic data storage or transmission wherein an offense described in this Section is committed may be charged as a separate offense.

~~(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.~~

CLRC COMMENT: Amend § 25A103 by striking (a) 1 (B) because it is redundant and included in (a) 1 (A); same for §§ 25A104, 25A105.

§ 25A104. Electronic Enticement of a Child as a Second Degree Felony.

(a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission:

(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,

(2) with the intent to promote or facilitate the commission of a felony, or another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, agrees to meet with the minor, or with another person who represents him or herself to be a minor under the age of eighteen (18) years; and

(3) intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child as a Second Degree Felony.

(b) Electronic enticement of a child under this Section is a Second Degree Felony.

CLRC COMMENT: Delete (a)(1)(B) as reckless disregard is covered under knowing.

§ 25A105. Electronic Enticement of a Child as a First Degree Felony.

(a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission:

(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,

(2) with the intent to promote or facilitate the commission of a felony:

(A) that is murder or aggravated murder as defined in Title 9 GCA Chapter 16;

(B) that is a first degree felony; or

(C) that is another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, agrees to meet with the minor, or with another person who represents him or herself to be a minor under the age of eighteen (18) years; and

(3) intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child as a First Degree Felony.

(b) Electronic enticement of a child under this Section is a First Degree Felony.

CLRC COMMENT: Delete subsection (a)(1)(B) as reckless disregard is covered under knowing.

§ 25A106. Electronic Enticement; No Defense.

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.

CLRC COMMENT: Reenacted and consolidated from 25A102(c) and 25A103(d).

ARTICLE 2
CHILD PORNOGRAPHY

§ 25A201. Definitions.

As used in this Chapter:

(a) Child pornography means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(1) the pornographic production of the visual representation involves the use of a minor engaging in sexual conduct; or

(2) the pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

(b) Community standards means the standards of Guam.

(c) Computer means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes, all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

(d) Computer equipment means any equipment or devices, including all input, output, processing, storage, software, or communications facilities, intended to interface with the computer.

(e) Computer network means two (2) or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

(f) Computer program or software means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

(g) Computer services includes, but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

(h) Computer system means a set of interconnected computer equipment intended to operate as a cohesive system.

(i) Data means information, facts, concepts, software, or instructions prepared for use in a computer, computer system, or computer network.

(j) Lascivious means tending to incite lust to deprave the morals with respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

(k) Material means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

(l) Minor means any person less than eighteen (18) years old.

(m) Pornographic shall have the same meaning as in Title 9 GCA Chapter 28, Article 2.

(n) Sadomasochistic abuse means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(o) Sexual conduct means acts of sexual penetration, sexual contact, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

(p) Visual representation includes, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(q) Disseminate means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

CLRC COMMENT: No change.

§ 25A202. Possession of Child Pornography.

(a) A person commits the offense of possession of child pornography if, knowing or having reason to know its character and content, the person possesses:

(1) child pornography;

(2) any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or

(3) any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Possession of child pornography under this Section is a Second Degree Felony.

CLRC COMMENT: No change.

§ 25A203. Dissemination of Child Pornography.

(a) A person commits the offense of dissemination of child pornography if, knowing or having reason to know its character and content, the person:

(1) disseminates child pornography;

(2) reproduces child pornography with intent to disseminate;

(3) disseminates any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography;

(4) disseminates any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(5) possesses ten (10) or more images of any form of child pornography regardless of content, and the content of at least one (1) image contains one (1) or more of the following:

(A) a minor who is younger than the age of fourteen (14);

(B) sadomasochistic abuse of a minor;

(C) sexual penetration of a minor; or

(D) bestiality involving a minor.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Dissemination of child pornography under this Section is a First Degree Felony.

CLRC COMMENT: No change.

§ 25A204. Production of Child Pornography.

(a) A person commits the offense of production of child pornography if, knowing or having reason to know its character and content, the person produces, manufactures, reproduces, copies, photographs, films, videotapes, video captures, creates, directs, promotes, advertises, publishes, issues, or presents to show any visual depiction of child pornography as defined in § 25A201 of this Chapter, or any pornographic material where:

(1) the production of such visual depiction involves the use of a minor engaging in sexual conduct;

(2) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexual conduct;

(3) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct;

(4) there is visual material containing the lewd or lascivious display of a minor's intimate area underneath clothing or sexual conduct of a minor; or

(5) there is visual material containing the display of a minor's intimate area underneath clothing that is prohibited under 9 GCA § 70.35.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Production of child pornography is a First Degree Felony.

CLRC COMMENT: No change.

CHAPTER 31

OFFENSES AGAINST THE FAMILY

§ 31.10. Bigamy; Defined & Punished.

(a) A married person is guilty of *bigamy*, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(1) the defendant believes that the prior spouse is dead;

(2) the defendant and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the defendant to be alive;

(3) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the defendant does not know that judgment to be invalid; or

(4) the defendant reasonably believes that he is legally eligible to remarry.

(b) A person is guilty of bigamy if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy.

CLRC COMMENT: No change.

§ 31.15. Incest: Defined & Punished.

A person is guilty of *incest*, a misdemeanor, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. Cohabit means to live together under the representation or appearance of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

CLRC COMMENT: No change.

§ 31.20. Abortion.

(a) *Abortion* means the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(b) An *abortion* may be performed:

(1) by a physician licensed to practice medicine this Territory or by a physician practicing medicine in the employ of the government of the United States;

(2) in the physician's adequately equipped medical clinic or in a hospital approved or operated by the United States or this Territory; and

(3) (A) within 13 weeks after the commencement of the pregnancy; or

(B) within 26 weeks after the commencement of the pregnancy if the physician has reasonably determined using all available means:

(i) that the child would be born with a grave physical or mental defect; or

(ii) that the pregnancy resulted from rape or incest; or

(C) at any time after the commencement of pregnancy if the physician reasonably determines using all available means that there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother.

CLRC COMMENT: No change.

§ 31.21 Illegal Abortions Punished.

Any person performing an abortion in circumstances other than permitted by § 31.20 shall be guilty of a third degree felony.

CLRC COMMENT: No change.

§ 31.22 Refusal to Participate in Abortion.

(a) (1) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any person employed or with staff privileges at a hospital, facility or clinic to directly participate in the induction or performance of an abortion, if such employee or other person has filed a written statement with the employer or the hospital, facility or clinic indicating a moral, ethical or religious basis for refusal to participate in the abortion.

(2) No such employee or other person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his refusal to participate in an abortion. No such employee of a hospital, facility or clinic which does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of such person's participation in the performance of an abortion in other than such hospital, facility or clinic.

(3) No employer shall refuse to employ any person because of such person's refusal for moral, ethical or religious reasons to participate in an abortion, unless such person would be assigned in the normal course of business of any hospital, facility or clinic to work in those parts of the hospital, facility or clinic where abortion patients are cared for. No provision of this Chapter prohibits any hospital, facility or clinic which permits the performance of abortions from inquiring whether the employee or prospective employee would advance a moral, ethical or religious basis for refusal to participate in an abortion before hiring or assigning such a person to that part of a hospital, facility or clinic where abortion patients are cared for.

(4) The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subsection shall not form the basis of any claim for damages.

(b) No hospital, facility, or clinic shall refuse staff privileges to a physician because of such physician's refusal to participate in the performance of an abortion for moral, ethical, or religious reasons.

(c) (1) Nothing in this Chapter shall require a non-profit hospital or other facility or clinic which is operated by a religious corporation or other religious organization or any administrative officer, employee, agent, or member of the governing board thereof, to perform or permit the performance of an abortion in such facility or clinic or to provide abortion services. No such non-profit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act.

(2) The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic which does not permit the performance of abortions on its premises shall post notice of such proscription in an area of such facility or clinic which is open to patients and prospective admittees.

(d) (1) This section shall not apply to medical emergency situations and spontaneous abortions.

(2) Any violation of this section is a misdemeanor.

CLRC COMMENT: No change.

§ 31.30. Child Abuse; Defined & Punished.

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

(1) he subjects a child to cruel mistreatment; or

(2) inflicts upon a child unjustifiable physical pain or mental suffering; or willfully causes or permits any child to suffer;

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

~~(2)~~ (3) 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)~~ (B) 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.

(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).

(d) As used in this Section:, neglect of a child shall consist in any of the following acts by anyone having the custody or control of the child:

(1) 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

(2) failure to do or permit to be done any act necessary for the child's physical or moral well-being.

CLRC COMMENT: Amendments to subsection (a) are for clarification, to remove redundant language and to clearly establish neglect as abuse. New subsection (d) defines neglect. Reference Cal. Penal Code § 11165.3 (The willful harming or injuring of a child or the endangering of the person or health of a child) and N.J.S.A 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes).

~~**§ 31.35. Reporting of Suspected Child Abuse to Department of Public Health and Social Services.**~~

~~**[Repealed by P.L. 14-137 (1978)]**~~

CLRC COMMENT: Remove previously repealed section.

~~**§ 31.37. Registry of Cases of Suspected Child Abuse Reported to Department of Public Health and Social Services.**~~

[Repealed by P.L. 14-137 (1987)]

CLRC COMMENT: Remove previously repealed section.

§ 31.40. Abuse of An Incompetent; Defined & Punished.

(a) A person is guilty of *abuse of an incompetent* when:

(1) he subjects an incompetent to cruel mistreatment; or

(2) having an incompetent in his care of custody or under his control, he:

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

(B) subjects that incompetent to cruel mistreatment; or

(C) unreasonably causes or permits the physical or emotional health of that incompetent to be endangered.

(b) As used in this Section, *incompetent* means a person who is unable to care for himself because of old age, or because of physical or mental illness, disease or defect.

(c) *Abuse of an incompetent* 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.

CLRC COMMENT: No change.

§ 31.45. Failure to Provide; Defined & Punished.

(a) A person is guilty of *failure to provide* when having a spouse, child or indigent parent whom he is legally obliged to support, he knowingly fails to furnish that person with necessary support.

(b) As used in this Section, support includes food, clothing, shelter, medical attention and education.

(c) As used in this Section, child includes a child conceived but not yet born.

CLRC COMMENT: No change.

§ 31.50. Surety for Support.

(a) If at any time before sentencing under any prosecution pursuant to § 31.45, the defendant appears before the court and enters into any undertaking with sufficient sureties in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will pay to the person having custody of such spouse, child or parent, such sum per month as may be fixed by the court to provide necessary food, clothing, shelter or medical attendance or other remedial care, then the court may suspend proceedings or sentence therein.

(b) The undertaking provided pursuant to Subsection (a) shall be valid and binding for one (1) year, or such lesser time as the court shall fix.

(c) Upon the failure of the defendant to comply with the undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had in the action or why sentence should not be imposed, whereupon the court may proceed with the action, or pass sentence or for good cause shown may modify the order and take a new undertaking and further suspend proceedings or sentence for a like period.

CLRC COMMENT: No change.

§ 31.55. Fine Imposed May be Used for Support.

In any case where there is a conviction of an offense under § 31.45 and a sentence to pay a fine, such fine may be directed by the court to be paid in whole or in part to the spouse, child or parent or guardian or custodian of such person.

CLRC COMMENT: No change.

~~**§ 31.60. Criminal Spouse Abuse: Penalty.**~~

[Repealed by P.L. 22-160:3 (1994)]

CLRC COMMENT: Remove previously repealed section.

~~**§ 31.65. Curfew Hours for Minors.**~~

~~(a) Definitions. As used in this Section:~~

~~(1) *Curfew Hours* means:~~

~~(A) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, *or* Thursday until 6:00 a.m. of the following day; and~~

~~(B)12:01 a.m. until 6:00 a.m. on any Saturday *or* Sunday.~~

~~(2) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, *but is not limited to*, a fire, a natural disaster, an automobile accident, *or* any situation requiring immediate action to prevent serious bodily injury *or* loss of life.~~

~~(3) *Establishment* means any privately-owned place of business operated for a profit to which the public is invited, including, *but not limited to*, any place of amusement *or* entertainment.~~

~~(4) *Guardian* means:~~

~~(A) a person who, under court order, is the guardian of the person of a minor; or~~

~~(B) a public *or* private agency with whom a minor has been placed by a court.~~

~~(5) *Minor* means any person under seventeen (17) years of age.~~

~~(6) *Operator* means any individual, firm, association, partnership, or corporation operating, managing, *or* conducting any establishment. The term includes the members *or* partners of an association *or* partnership and the officers of a corporation.~~

~~(7) *Parent* means a person who is:~~

~~(A) a natural parent, adoptive parent, *or* step-parent of another person; or~~

(B) at least eighteen (18) years of age and authorized by a parent *or* guardian to have the care and custody of a minor.

(8) *Public Place* means any place to which the public *or* a substantial group of the public has access and includes, *but is not limited to*, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(9) *Remain* means to:

(A) linger *or* stay; *or*

(B) fail to leave premises when requested to do so by a peace officer *or* the owner, operator, *or* other person in control of the premises.

(10) *Serious Bodily Injury* means bodily injury that creates a substantial risk of death *or* that causes death, serious permanent disfigurement, *or* protracted loss *or* impairment of the function of any bodily member *or* organ.

(b) Offenses.

(1) A minor commits an offense *if* he remains in any public place *or* on the premises of any establishment on Guam during curfew hours.

(2) A parent *or* guardian of a minor commits an offense *if* he knowingly permits, *or* by insufficient control allows, the minor to remain in any public place *or* on the premises of any establishment on Guam during curfew hours.

(3) The owner, operator, *or* any employee of an establishment commits an offense *if* he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(c) Defenses.

(1) It is a defense to prosecution under Subsection (b) that the minor was:

(A) accompanied by the minor's parent *or* guardian;

(B) on an errand at the direction of the minor's parent *or* guardian, without any detour *or* stop;

(C) engaged in an employment activity, *or* going to *or* returning home from an employment activity, without any detour *or* stop;

(D) involved in an emergency;

(E) on the sidewalk abutting the minor's residence *or* abutting the residence of a next-door neighbor *if* the neighbor did not complain to the police department about the minor's presence;

(F) attending *or* traveling to or returning home without detour from an official school, religious, *or* other recreational activity supervised by adults and sponsored by the government of Guam, a civic organization, *or* another similar entity that takes responsibility for the minor, *or* going to *or* returning home from, without any detour *or* stop, an official school, religious, *or* other recreational activity supervised by adults and sponsored by the government of Guam, a civic organization, *or* another similar entity that takes responsibility for the minor;

(G) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; *or*

(H) married *or* had been married, enlisted in a branch of the United States Armed Forces *or* the National Guard *or* had disabilities of minority removed in accordance with Article 3 of Chapter 4 of Title 19 GCA.

(2) It is a defense to prosecution under Subsection (b)(3) that the owner, operator, *or* employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(d) Enforcement. Before taking any enforcement action under this Section, a police officer *shall* ask the apparent offender's age and reason for being in the public place. The officer *shall* not issue a citation, take into custody *or* make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (c) is present.

(e) Penalties.

~~(1) A person who violates a provision of this Chapter is guilty of a separate offense for each day *or* part of a day during which the violation is committed, continued, *or* permitted. Each offense, upon conviction, is punishable by a fine *not to exceed* Five Hundred Dollars ($500).~~

~~(2) When required by §5104 of Title 19 GCA, as amended, the Superior Court *shall* waive original jurisdiction over a minor who violates Subsection (b)(1) of this Section and *shall* refer the minor to juvenile court.~~

CLRC COMMENT: Recommendation to repeal this section. This recommendation was based on questionable constitutionality of this section and was vigorously debated by the Commission. Attorney members of the Commission noted that the constitutionality of curfew laws has been widely challenged across the United States and believe this law would be struck down if were to be challenged in Guam. Some members conceded that this curfew law may be unconstitutional but because of Guam's problems with minors out past curfew they would prefer to leave it until it is challenged and struck down by the courts. This recommendation was opposed by the GPD member and a community member of the Commission.

§ 31.70. Leaving Children Unattended or Unsupervised in Motor Vehicles; Penalty; Authority of Law Enforcement Officer.

(a) A parent, legal guardian, or other person, at least twelve (12) years of age, responsible for a child five (5) years of age or younger, may not leave such child unattended or unsupervised in a motor vehicle:

(1) For a period in excess of fifteen (15) minutes; or

(2) For any period of time if the motor of the vehicle is running or the health of the child is in danger.

(b) Any person who knowingly violates the provisions of Subsection (a)(1) commits a petty misdemeanor.

(c) Any person who violates the provisions of Subsection (a)(2) is guilty of a violation, punishable by a fine not less than Fifty Dollars ($50) and not more than Five Hundred Dollars ($500).

(d) Any person who <u>knowingly</u> violates Subsection (a) and in so doing causes serious bodily injury, permanent disability, or permanent disfigurement to a child commits a felony of the third degree.

(e) Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of Subsection (a) may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.

(1) If the child is removed from the immediate area, notification should be placed on the vehicle.

(2) The child shall be remanded to the custody of the Child Protective Services Division pursuant to Title 19 GCA, Chapter 13, unless the law enforcement officer is able to locate the parents or legal guardian or other person responsible for the child.

CLRC COMMENT: Amend subsection (d) to include "knowingly" as the required mental state. Reference MPC § 2.02 (General Requirements of Culpability) and 9 GCA § 4.25 (Culpability).

CHAPTER 34

ARSON, NEGLIGENT BURNING, CRIMINAL MISCHIEF

§ 34.10. Definitions.

As used in this Chapter:

(a) *Property* means any form of real property or tangible personal property which is capable of being damaged or destroyed.

(b) *Habitable Property* means any structure, vehicle or vessel adapted for the accommodation or occupation of persons.

(c) *Property* is that of another if anyone other than the defendant has a possessory or proprietary interest in any portion thereof.

(d) *Forest land* means any brush covered land, cut-over land, forest, grasslands, jungle, or woods.

CLRC COMMENT: No change.

§ 34.20. Aggravated Arson; Defined & Punished.

(a) A person is guilty of aggravated arson if he recklessly damages any habitable property by means of fire or explosives in conscious disregard of a substantial risk that at the time of such conduct a person may be in such habitable property, whether or not a person is actually present.

(b) Aggravated arson is a second degree felony. In the case of aggravated arson 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.

CLRC COMMENT: No change.

§ 34.30. Arson; Defined & Punished.

(a) A person is guilty of *arson* if under circumstances not amounting to aggravated arson he starts a fire or causes an explosion, whether on his own property, another's property, or forest land:

(1) with the intention of defrauding an insurer; or

(2) in reckless disregard of a risk that his conduct will damage or destroy the property of another; or

(3) in reckless disregard of a risk that his conduct will damage or destroy forest land.

(b) Arson is a third degree felony.

CLRC COMMENT: No change.

§ 34.40. Negligent Burning; Defined & Punished.

(a) A person is guilty of *negligent burning* if he:

(1) negligently starts a fire or causes an explosion whether on his own property, another's property, or forest land, and thereby negligently endangers human life, or negligently places the property of another, or forest land, in danger of damage or destruction; or

(2) having started a fire, whether negligently or not, and knowing that its spread will endanger the life or property of another, or forest land, either fails to take reasonable measures to put out or control the fire, or fails to give a prompt fire alarm.

(b) Negligent burning is a misdemeanor. If a person guilty of negligent burning is offered Alternative Service Restitution in accordance with Article 6 of Chapter 80, 9 GCA, the restoration of forest lands is an allowable form of restitution or alternative community service.

CLRC COMMENT: No change.

§ 34.50. Criminal Mischief; Defined.

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~~.

CLRC COMMENT: Amendments for consistency with amendments to § 34.60.

§ 34.60. Criminal Mischief; Punished.

~~(a) A violation of subsections (b) or (d) of § 34.50 is a third degree felony~~.

(~~b~~ a) 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~~ b), 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 re-paint 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~~ b) 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.

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 for uniformity with 9 GCA Chapter 80 (Disposition of Offenders).

§ 34.70. Graffiti Prohibited.

(a) Definitions. For the purpose of this section, the following terms apply:

(1) *Broad-tipped indelible marker* means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half inch or greater.

(2) *Bona fide evidence of majority* means a document issued by a federal, state, county or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under

the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

(3) *Owner* means any and all persons with legal and/or equitable title to real property in Guam as their names and addresses are shown upon the records of the Department of Revenue of Taxation or the Department of Land Management.

(4) *Supervising Adult* means an individual eighteen (18) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.

(5) *Used or intended to be used* includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.

(b) No person shall write, paint or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property owned, operated or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm or corporation unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained.

(c) Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad-tipped indelible marker with the intent to violate the provisions of this section.

(d) Possession of spray paint or broad-tipped indelible markers by minors on public property is prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container or spray paint can or broad-tipped indelible marker while on public property, highway, street, alley, or way except in the company of a supervising adult.

(e) Possession of spray paint or broad-tipped indelible markers by minors on private property is prohibited without consent of the owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession of the aerosol container or marker while on his or her property.

(f) Any person violating subsections (b), (c), (d) or (e) shall be punished by a fine of one thousand dollars ($1,000.00) for the first offense, and two thousand five hundred dollars ($2,500.00) for the second offense; and for each subsequent offense by a fine of five thousand dollars ($5,000.00) or by imprisonment for a term *not to exceed* one hundred twenty (120) days or by both fine and imprisonment at the discretion of the court. In the case of a minor, the parents or legal guardian *shall* be responsible for 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.

(g) In addition to any punishment ordered under subsection (f), the court shall order any person found in violation of subsections (b), (c), (d) or (e) to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court. Where the defendant is a minor, the parents or legal guardian shall be jointly and severally liable with the minor to make such restitution.

(h) In addition to any punishment listed in subsections (f) and restitution ordered under subsection (g), the court shall order any person found in violation of subsection (b), (c), (d) or (e) to perform monitored community service in the removal of graffiti of *not less than* two hundred fifty (250) hours and *not more than* five hundred (500) hours.

(i) In addition to any punishment listed in subsections (f), (g) and (h), any adult convicted for violating subsections (b), (c), (d) or (e) is guilty of a misdemeanor punishable by imprisonment ~~for not less than a mandatory sixty (60) days~~.

(j) All personal property, including, but not limited to, automobiles and bicycles, used or intended to be used in violating subsections (b), (c), (d) or (e) shall be forfeitable to Guam. In any forfeiture under this section, the Court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by the laws of Guam, the Organic Act, and the U.S. Constitution.

(k) No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen years (18) shall buy any aerosol container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.

(l) Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers *shall*:

(1) Place a sign in clear public view at or near the display of such products stating:

"GRAFFITI IS A CRIME. ANY PERSON DEFACING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO ONE HUNDRED TWENTY (120) DAYS AND/OR A FINE UP TO FIVE THOUSAND DOLLARS ($5.000.00)."

(2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers which states:

"IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF TW0 HUNDRED FIFTY DOLLARS ($250.00)."

(m) Violation of subsection (l) shall result in a civil penalty of two hundred fifty dollars ($250.00) for a first offense and five hundred dollars ($500.00) for subsequent offenses. When three (3) violations of subsection (l) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two (2) years. Violation of such injunction shall be punished by a fine of two hundred fifty hundred dollars ($250.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers until payment of the fine, attorney's fees and costs.

(n) In addition to any punishment ordered under Subsection (f), (g), (h), (i) and (j), the court *shall* immediately, upon conviction of an offender charged with the defacement of property, revoke the license or instruction permit of any driver in violation of this Section subject to a period of time described hereafter:

(1) after one (1) conviction, six (6) months;

(2) after a second or subsequent conviction, one (1) year for each conviction.

Any person who was convicted of any offense as described in this Act upon being eligible to receive a license or instruction permit, *shall not* be eligible to receive a license or instruction permit until the entire penalty period has elapsed.

Any prior convictions resulting in the revocation of a driver's license or instruction permit *shall not* run concurrently with any existing or subsequent suspension, revocation, cancellation or denial which is provided for by law.

CLRC COMMENT: Amendments for clarification and for uniformity with 9 GCA Chapter 80 (Disposition of Offenders)

§ 34.80. Use of Fines Collected.

Effective upon the enactment of this Section, all monies collected by the enforcement of 9 GCA §§ 34.60 or 34.70 shall be deposited in the Appointed Counsel Trust Fund established under 7 GCA § 22111 for fees and expenses related to the legal defense of indigent persons and for other purposes as set forth by the Judicial Council.

CLRC COMMENT: No change.

§ 34.90. Destruction of Property: Penalty.

A person commits a misdemeanor if, he without the written permission of the owner or of the owner's agent or of the person in lawful possession:

(a) Maliciously tears down, damages, mutilates or destroys any sign, signboard or notice placed upon, or affixed to any property that belongs to the government of Guam, which sign, signboard or notice is intended to indicate or designate a road or highway or is intended to designate speed limits or a traffic hazard or is intended to direct travelers from one point to another or is intended to advise of prohibited entry or relates to fires, fire control, trespassing or other matters involving the protection of the property;

(b) Wilfully opens, tears down or otherwise destroys any fence on the land of another or wilfully removes, injures, cuts or tampers with any lock or any locked gate or any locked chain or any other locked barrier on any road, track or trail leading into lands of another or maliciously tears down, mutilates or destroys any sign, signboard or other notice forbidding shooting on public or private property; or

(c) Enters any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing or injuring any lawful business or occupation carried on by the owner of such land, his agent or by the person in lawful possession; or

(d) Enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, any other or enters upon uncultivated and unenclosed lands belonging to, or occupied by, any other where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries on all roads and trails entering such lands:

(1) For the purpose of hunting, shooting, killing or destroying any animal or bird upon such lands; or

(2) Discharges any firearms upon such land or lands; or

(3) Refuses or fails to leave such lands immediately upon being requested to leave by the owner of such land, his agent or by the person in lawful possession; or

(4) Tears down, mutilates or destroys any sign, signboard or notice forbidding entry on such lands.

(e) Enters upon any lands declared closed to public entry by the Government where such closed lands are posted with notices declaring such closure at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through such lands declaring the lands closed to public entry or stating "no trespassing." The Director of the Department of Land Management, in compliance with the Administrative Adjudication Act, is authorized to designate as closed to public entry and post "no trespassing" signs on any portion or portions of property belonging to the Government upon his determination that such designation is reasonably necessary for the purpose of public safety, preservation of government property, conservation of resources, fire prevention, safety of adjoining property owners or prevention of nuisances.

CLRC COMMENT: No change.

CHAPTER 37

BURGLARY AND HOME INVASION

ARTICLE 1
BURGLARY

§ 37.10. Definitions: Ref. to § 16.10.

As used in this Chapter:

(a) Habitable Property has the meaning provided by § 34.10 and includes any such property whether or not a person is actually present therein.

(b) Night means the period between thirty (30) minutes past sunset and thirty (30) minutes before sunrise.

(c) Deadly Weapon has the meaning provided by §16.10, Title 9, Guam Code Annotated.

(d) Motor Vehicle, Semi-Trailer, Trailer, Truck, Truck-Tractor, Vehicle, and Vehicle Combination are defined by § 5101, Title 16, Guam Code Annotated; and Motor Vehicle, Motor Bus. Motor Truck, Semi-Trailer, Trailer, and Vehicle are also defined by § 1102, Title 16, Guam Code Annotated.

(e) School means any public or private educational facility, including institutions of higher learning, which shall encompass all instructional, non-instructional, sports and extra curricular buildings and facilities.

CLRC COMMENT: No change.

§ 37.20. Burglary: Defined, Punishment Classified.

(a) A person is guilty of burglary if he enters or surreptitiously remains in any habitable property, building, or a separately secured or occupied portion thereof, or if he enters or surreptitiously remains in any School as defined in § 37.10(e) of this Chapter, with intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter, or a person is guilty of burglary if he enters or surreptitiously remains in any motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motor bus, motor truck, or vehicle, with intent to commit a crime therein. It is an affirmative defense to prosecution for burglary that the property, or building, or motor vehicle was abandoned or if the person reasonably believed that he or she owned, leased rented or was otherwise licensed to enter and remain in the habitable property, building, or a separately secured or occupied portion thereof, or the School, motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motorbus, motor truck, or vehicle.

(b) Burglary is a felony of the second degree. In the case of burglary 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, the court may sentence the offender to not more than five (5) years imprisonment as a third degree felony conviction, and the provisions of this Subsection prohibiting probation, suspension, parole or work release shall not be applicable to such offender.

(c) A second or subsequent offense of burglary to a school shall be a felony of the first degree. In the case of a second or subsequent conviction of burglary committed to a school as a felony of the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years, and may impose a maximum term of up to twenty (20) 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. However, if the offender is under the age of eighteen years the court shall have the discretion to suspend all or a portion of the minimum sentence, and may encourage the Balanced Approach Restorative Justice Process as provided in 19 GCA § 5134.

CLRC COMMENT: Amendment to § 37.20(a) to add an affirmative defense to burglary, and to § 37.20(c) to provide a reference to the Family Court Act within 9 GCA.

§ 37.30. Criminal Trespass: Defined, Punished, Defenses.

(a) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any habitable property or any building or any motor vehicle. An offense under this Subsection is a misdemeanor

if it is committed in a dwelling or motor vehicle. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(1) actual communication to the defendant;

(2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) fencing or other enclosure manifestly designed to exclude intruders. An offense under this Subsection constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person or a peace officer. Otherwise it is a violation.

(c) It is an affirmative defense to prosecution under this Section that:

(1) the property or building involved in an offense under Subsection (a) was abandoned;

(2) the premises were at the time open to members of the public and the defendant complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) the defendant reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

CLRC COMMENT: No change.

~~**§ 37.40. The Breaking of Window Glass to Gain Access to Vehicles.**~~

~~(a) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, is guilty of an additional offense as a third degree felony.~~

~~(b) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, in which the broken glass causes bodily injury to an innocent person is guilty of an additional offense as a second degree felony.~~

CLRC COMMENT: To remove a duplicative section already covered by burglary-specific statutory language for vehicles in § 37.20 and because there is no need for second or third degree felony levels for breaking window glass, repeal § 37.40.

ARTICLE 2

HOME INVASION

CLRC COMMENT: No change.

§ 37.210. Home Invasion.

A person is guilty of home invasion when such person commits a crime of burglary, as defined by this Chapter, in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with the intent to commit a crime therein, and, in the course of committing the offense:

(a) acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a violent crime against the person of another person other than a participant in the crime who is actually present in such dwelling;

(b) such person is armed with explosives or a deadly weapon or dangerous instrument; or

(c) if any of the acts of a participant at any time during the burglary, or while attempting a burglary, or while fleeing from a burglary/attempted burglary, directly or indirectly, cause mental or emotional trauma, bodily injury, serious bodily injury, or the death of an occupant of the dwelling who is not a participant in the burglary.

CLRC COMMENT: No change.

37.220. In the Course of Committing Home Invasion.

An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense, or flight after the attempt or commission.

CLRC COMMENT: No change.

§ 37.230. Knowledge of Occupancy is Not a Defense.

It is no defense that the defendant reasonably believed that the dwelling was unoccupied, by a person who was not a participant in the crime, at the time the home invasion occurred.

CLRC COMMENT: No change.

§ 37.240. Home Invasion Punished.

(a) Home invasion is a first degree felony, and any person found guilty under this Section shall be sentenced to a term of imprisonment of which at least ten years may not be suspended or reduced by the court.

(b) The sentence imposed for home invasion shall run consecutively to any sentence for other crimes committed in conjunction with the home invasion.

CLRC COMMENT: No change.

ARTICLE 3

CARJACKING

§ 37.310. Carjacking.

A person is guilty of carjacking when such person commits a crime of burglary, as defined by this Chapter, in a vehicle, while a person other than a participant in the crime is actually present in such vehicle, with intent to commit a crime therein, and, in the course of committing the offense:

(a) acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a violent crime against the person of another person other than a participant in the crime who is actually present in such vehicle; or

(b) if any of the acts of a participant at any time during the burglary, or while attempting a burglary or while fleeing from a burglary/attempted burglary, directly or indirectly, cause the mental or emotional trauma, bodily injury, serious bodily injury or the death of an occupant of the vehicle who is not a participant in the burglary.

CLRC COMMENT: No change.

§ 37.320. Armed Carjacking.

Whoever commits the offense of carjacking while armed with, or having readily available, any pistol, or other firearm or imitation thereof, or other dangerous or deadly weapon, including a firearm, dirk, knife, switchblade, razor, blackjack, billy, or metallic or other false knuckles, or any object capable of inflicting death or serious bodily injury, shall be guilty of armed carjacking.

CLRC COMMENT: No change.

§ 37.330. In the Course of Committing Carjacking or Armed Carjacking.

An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.

CLRC COMMENT: No change.

§ 37.340. Knowledge of Occupancy is Not a Defense.

It is no defense the defendant reasonably believed that the vehicle was unoccupied, by a person who was not a participant in the crime, at the time the carjacking or armed carjacking occurred.

CLRC COMMENT: No change.

§ 37.350. Carjacking Punished.

(a) Carjacking is a first degree felony and any person found guilty under § 37.310 shall be sentenced to a term of imprisonment of which at least ten (10) years may not be suspended or reduced by the court.

(b) The sentence imposed for carjacking shall run consecutively to any sentence for other crimes committed in conjunction with the carjacking.

CLRC COMMENT: No change.

§ 37.360. Armed Carjacking Punished.

(a) Armed carjacking is a first degree felony and any person found guilty under § 37.320 shall be sentenced to a term of imprisonment of which at least fifteen (15) years may not be suspended or reduced by the court.

(b) The sentence imposed for armed carjacking shall run consecutively to any sentence for other crimes committed in conjunction with the carjacking.

CLRC COMMENT: No change.

CHAPTER 40

ROBBERY

CLRC COMMENT: No change.

§ 40.10. First Degree Robbery; Defined & Punished.

(a) A person is guilty of *robbery in the first degree* if, in the course of committing a theft, he:

(1) attempts to kill another; or

(2) intentionally inflicts or attempts to inflict serious bodily injury upon another.

(b) Robbery in the first degree is a felony of the first degree. In the case of robbery in the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years and may impose a maximum of up to twenty-five (25) years; the minimum term imposed shall not be suspended nor probation be imposed in lieu of said minimum term nor shall parole, work release or educational programs outside the confines of prison 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 time of imprisonment.

CLRC COMMENT: No change.

§ 40.20. Second Degree Robbery; Defined & Punished.

(a) A person is guilty of *robbery in the second degree* if, in the course of committing a theft, he:

(1) inflicts serious bodily injury upon another; or

(2) threatens another with or intentionally puts him in fear of immediate serious bodily injury; or

(3) is armed with or displays what appears to be explosives or a deadly weapon. ADeadly Weapon@ has the meaning provided by § 16.10.

(b) Robbery in the second degree is a felony of the second degree. In the case of robbery of the second degree 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.

CLRC COMMENT: No change.

§ 40.30. Third Degree Robbery; Defined & Punished.

(a) A person is guilty of robbery in the third degree if, in the course of committing a theft, he:

(1) uses force against another with intent to overcome his physical resistance or physical power of resistance; or

(2) threatens another with or intentionally puts him in fear of the imminent use of force against the person of anyone with intent to compel acquiescence to the taking of or escaping with property.

(b) Robbery in the third degree is a felony of the third degree.

CLRC COMMENT: No change.

§ 40.40. Definition of an Act.

An *act* occurs in the course of committing a theft if it occurs in an attempt to commit theft or in flight after the attempt or commission.

CLRC COMMENT: No change.

§ 40.50. No Defense of "Claim of Right".

It is no defense to a prosecution of robbery in any of its degrees that there was no theft because the taking was under a claim of right.

CLRC COMMENT: No change.

CHAPTER 43

THEFT AND RELATED OFFENSES

ARTICLE 1

DEFINITIONS

§ 43.10. Definitions.

As used in this Chapter, unless a different meaning plainly is required:

(a) *Deprive* means:

(1) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

(2) to abandon the property under circumstances amounting to a reckless exposure to loss.

(b) *Movable Property* means property the location of which can be changed, including things growing on, or affixed to, or found in land, and documents although the rights represented thereby have no physical location. Immovable Property is all other property.

(c) *Obtain* means:

(1) in relation to property, to bring about a transfer or purported transfer of legal interest in the property, whether to the obtainer or another; or

(2) in relation to labor or service, to secure performance thereof.

(d) *Property* means anything of value, including real estate, tangible and intangible personal property, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, trade secrets, or agricultural product, which includes floriculture, horticulture, viticulture, aquaculture, forestry products and commodities, shrubbery, nuts, coffee, seeds, or other farm or plantation products or commodities grown by or raised by a bona fide farmer as defined by 5 GCA§ 60354(f).

(e) *Property of Another* includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(f) *Trade Secret* means the whole or any portion of phase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and is not generally available to the public, and which gives one who uses it an advantage over actual or potential competitors who do not know of or use the trade secret, or the contents of private and unpublished records used in the business of examining, certifying or insuring titles to real property. Proof that the owner takes measures to prevent information from becoming available to persons other than those selected by the owner to have access thereto for limited purposes gives rise to an inference that the information is secret.

CLRC COMMENT: No change.

§ 43.15. Theft a Single Offense.

Conduct denominated theft in this Chapter constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Chapter, notwithstanding the specification of a different manner in the accusatory pleading, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice of by surprise.

CLRC COMMENT: No change.

§ 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 ~~is 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 ~~amount~~ 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.

§ 43.21. Definition of Unauthorized Electrical Connections or Illegal Power Hook-Ups.

An illegal power hook-up is any connection to power lines which belong to the government of Guam, that is made without the prior written permission of the Guam Power Authority, or any power hook-up from a direct power line which bypasses or hinders meter registration. The conditions include, but are not limited to:

(a) External jumpers;

(b) Bypass on meter;

(c) Tap ahead of electric meter;

(d) Inverted (electric) or reversed substitution meter;

(e) Manipulation of meter dials;

(f) Foreign materials inside electric meter;

(g) Open potential line;

(h) Unmetered theft of service;

(i) Metered theft of service; or

(j) Any other unauthorized or illegal hook-up.

CLRC COMMENT: No change.

§ 43.25. Defenses; Conditions Upon Same.

(a) It is an affirmative defense to prosecution for theft that the defendant:

(1) was unaware that the property or service was that of another; or

(2) acted in good faith under a claim of right to the property or service involved or that he had a claim of right to acquire or dispose of it as he did.

(b) It is no defense that theft was from the defendant's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

CLRC COMMENT: No change.

§ 43.30. Theft of Property; Defined.

(a) A person is guilty of *theft* if he unlawfully takes or obtains or exercises unlawful control over, movable property of another with intent to deprive him thereof.

(b) A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with intent to deprive him thereof.

CLRC COMMENT: No change.

§ 43.31. Crime Against the Community; Defined and Punishment.

(a) A person is guilty of a Crime Against the Community if that person knowingly takes, obtains or exercises unlawful control over government-owned, leased or borrowed property, or interferes with, obstructs, or takes action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety; or (2) doing so results in a deprivation of public services, such as utility services, the education of public or private school students, or any government service intended to benefit the public.~~; or (3) does so for a purpose other than the original purpose for which the property or services were to be provided.~~

(b) A person is guilty of a Crime Against the Community if that person knowingly destroys, defaces, alters, tampers with or damages government-owned, leased or borrowed property.

(c) A Crime Against the Community shall be alleged, in an information, complaint or indictment, as a Special Allegation which enhances punishment when the defendant is convicted of another offense. A Crime Against the Community shall be tried to a jury if the underlying crime is tried to a jury.

(d) A person convicted of a Crime Against the Community shall be sentenced to:

(1) Insofar as is practicable, make restitution to the victim of the crime, including the government of Guam or the Federal government;

(2) Insofar as is practicable, perform community service intended to raise community awareness that a crime against the public interest has been committed and is being punished, including, *but not limited to*, repair, painting and cleaning of items which are stolen, damaged or defaced; or

(3) Serve one (1) year of incarceration and pay an additional fine of up to Five Thousand Dollars ($5,000.00) in addition to the sentence imposed for the underlying crime, if the underlying crime is a misdemeanor or felony. The court may suspend said term of incarceration and impose a term of probation instead.

CLRC COMMENT: Repeal § 43.31(a)(3) to remove vagueness and ambiguity.

§ 43.35. Theft by Deception; Defined.

(a) A person is guilty of *theft* if he intentionally obtains property of another by deception. A person deceives if he intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

(2) prevents another from acquiring information which would affect his judgment of a transaction;

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is not a matter of official record.

(b) The term deceive does not include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive typical members of the group addressed.

CLRC COMMENT: No change.

§ 43.40. Theft by Threatening; Defined; Defense.

(a) A person is guilty of *theft* if he intentionally obtains property of another by threatening to:

(1) inflict bodily injury on anyone or commit any other criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

(4) take or withhold action as an official, or cause an official to take or withhold action;

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the defendant purports to act;

(6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) do any other act which would not substantially benefit the defendant but which is calculated to harm another person.

(b) It is an affirmative defense to prosecution for extortion by threats to charge any person with a crime that the defendant honestly believed the threatened charge to be true and that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances to which such charge addressed.

CLRC COMMENT: No change.

§ 43.45. Theft of Property Lost, Mislaid or Delivered by Mistake; Defined.

A person who comes into control of property of another that he knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

CLRC COMMENT: No change.

§ 43.50. Theft by Receiving Stolen Property; Defined.

(a) A person is guilty of *theft* if he intentionally receives, retains or disposes of movable property of another knowing that it has been stolen or believing that it has probably been stolen. It is a defense to a charge of violating this Section that the defendant received, retained or disposed of the property with intent to restore it to the owner.

(b) Where the defendant is in the business of buying, selling or otherwise dealing in property, proof that he obtained stolen property without having made reasonable inquiry whether the person from whom he obtained it has the legal right to sell or deliver it, and that he obtained it under circumstances which should have caused him to make such inquiry, gives rise to an inference that he obtained it knowing that it has been stolen or believing that it has been probably been stolen.

(c) Any person or corporation which is in the business of buying or selling gold, diamonds, coins, silver, or gems or jewelry shall retain for a minimum of one (1) year after the last entry a log book of all purchases made from on-island sources, indicating the nature of the items bought, the name and address of the seller, the price paid, and the date of purchase. In addition, in the case of items purchased from a person not in the business of selling gold, coins, diamonds, gems, silver, or jewelry, the purchaser shall either take a picture of the seller, or shall obtain identification from the seller containing a picture. The above records shall be made available to law enforcement officers upon request.

(d) Any person or corporation which is in the business of buying or selling gold, diamonds, coins, silver, or gems or jewelry shall retain all items purchased on Guam from persons not business licensed for the purpose of buying or selling gold, diamonds, coins, silver, gems or jewelry for a period of seven (7) days before selling, melting, destroying, or otherwise disposing of such items purchased on Guam.

(e) It shall be unlawful for any person to knowingly purchase gold, diamonds, jewelry, silver, gems or coins from any person under the age of eighteen (18) years, provided that nothing herein shall be construed as prohibiting the parent or guardian of a minor child from selling gold, diamonds, jewelry, coins or gems belonging to a minor child, on behalf of said child.

(f) Any person, corporation or entity who, as a substantial part of a business, buys and sells used items, including copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans and including any contractor who buys copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, in the course of conducting his or her business, shall retain, for a minimum of one (1) year form authorized by the Chief of Police of all purchases of copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans from on-island sources, indicating the nature and a reasonable estimate of the size, shape, weight, and length of the items bought, the name, signature and address of the seller, the price paid, and the date of purchase, telephone number, and shall obtain and maintain a copy of each seller's identification documents, including, but not limited to, a government driver's license, government identification card or passport, and a copy of the registration certificate of the vehicles used to transport the copper wire, bronze, brass, aluminum and other non ferrous metals but shall not include recyclable aluminum cans, the name of the employee representing the scrap metal business in the transaction. The above records shall be made available to law enforcement officers upon request. Copies of all completed forms or paper of information required by this Section, immediately upon purchase of the copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, shall be immediately transmitted via email or by facsimile transmittal to the Guam Police Department.

(g) Any person, corporation or entity who, as a substantial part of a business, buys and sells used items, including copper wire, bronze, brass, aluminum and other non ferrous metals but shall not include recyclable aluminum cans, and including any contractor who buys copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, in the course of conducting his or her business, who purchases said items from persons who do not have a business license for buying or selling copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, shall keep such items for a period of seven (7) days before altering, selling, melting, destroying, or otherwise disposing of said items purchased on Guam.

(h) Any knowing violation of Subsections (c), (d) or (e) of § 43.50 of Chapter 43 of Title 9 GCA shall be a misdemeanor upon the first conviction of any such violation, and shall be a felony of the third degree for any subsequent offense. Any violation of Subsections (f) or (g) shall be a felony of the third degree. A third conviction of any such violation shall require revocation of the offender's business license.

(i) Any violation of subsections (f) or (g), *shall* be punishable by a term of one (1) to five (5) years in prison, a fine of Ten Thousand Dollars ($10,000) to Twenty-five Thousand Dollars ($25,000) and restitution per incident. The amount of restitution *shall* include the replacement cost of the item, the cost of repairs for damages caused by the theft and the cost associated with the loss of use of the item.

CLRC COMMENT: No change.

§ 43.51. Theft of Utilities.

(a) A person is guilty of *theft* if he knowingly tampers with, alters or by-passes meters for the purpose of obtaining electrical power, gas or water without paying compensation to the entity providing such services. A person commits theft if he knowingly diverts telephone service, electrical power, gas or water to his own benefit or to the benefit of another not entitled thereto with the intent to avoid payment to the entity providing such service.

(b) Unauthorized Electrical Connections; Bypass or Obstruction of Meter. Every user, contractor or business who shall unlawfully and knowingly injure, alter, or procure to be injured, make or cause to be made any connection in any manner whatsoever with any electric wire or electric appliance of any character whatsoever operated by any user, users, corporations or government entities authorized to generate, transmit and sell electric current, or who shall so willfully and knowingly with intent to injure or defraud, use or cause to be used any such connection in such manner as to supply any electric current for heat or light or power to any electric lamp, apparatus or device, by, or at which electric current is consumed or otherwise used or wasted, without passing through a meter for the measuring and registering of the quantity passing through such electric wire or apparatus, or who shall, knowingly or with like intent injure, alter or procure to be injured or altered any electric meter, or obstruct its working, or procure the same to be tampered with or injured, or use or cause to be used any electric meter, or appliance so tampered with or injured, shall be deemed guilty of a theft constituting a felony in the third degree, and shall be subject to any and all fines, penalties and terms of imprisonment applicable by law, as well as any and all fines payable to the Guam Power Authority.

CLRC COMMENT: No change.

§ 43.55. Theft of Services; Defined.

(a) A person is guilty of *theft* if he intentionally obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. Services include labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for services is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to an inference that the service was obtained by deception as to intention to pay.

(b) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

CLRC COMMENT: No change.

§ 43.56. Unauthorized Reception of Cable Service.

(a) Unauthorized Interception or Receipt or Assistance in Intercepting or Receiving Service; Definition of Assist in Intercepting or Receiving.'

(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this Section, the term >assist in intercepting or receiving' shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of Subparagraph (1).

(b) Penalties for Willful Violation.

(1) Any person who willfully violates Subsection (a)(1) shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisoned for not more than one (1) year, or both, for the first such offense and shall be guilty of a felony of the third degree and shall be punished by a fine of not more than Three Hundred Dollars ($300.00) or imprisoned for not more than three (3) years, or both, for any subsequent offense.

(2) Any person who violates Subsection (a)(1) willfully and for purposes of commercial advantage or private financial gain shall be guilty of a felony of the third degree and shall be punished by a fine of not more than Three Thousand Dollars ($3,000.00) or imprisoned for not more than three (3) years, or both, for the first such offense and shall be guilty of a felony of the second degree and shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or imprisoned for not more than five (5) years, or both, for any subsequent offense.

(3) For purposes of all penalties and remedies established for violations of Subsection (a)(1), the prohibited activity established herein, as it applies to each such device, shall be deemed a separate violation.

CLRC COMMENT: No change.

§ 43.60. Theft of Property Held in Trust; Defined.

A person who in the course of business obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property as his own and fails to make the required disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

CLRC COMMENT: No change.

§ 43.65. Unauthorized Use of Vehicle: Defined; Punished; Defense.

(a) A person commits a misdemeanor if he operates an automobile, aircraft, motorcycle, motorboat or other motor-propelled vehicle or vessel, or sailboat, without consent of the owner or other person authorized to give consent.

(b) It is an affirmative defense to prosecution under this Section that the defendant reasonably believed that the owner or other person authorized to give consent would have consented to the operation had he known of it.

CLRC COMMENT: No change.

§ 43.70. Reimbursement to Owner of Stolen Livestock or Agricultural Products.

In any case where there is a conviction under the provisions of Chapter 43 of this Code and the property stolen by the defendant was livestock or agricultural product, as that term is used in § 43.10(d) of this Article, in addition to a fine or imprisonment imposed, the court shall direct that the defendant pay to the owner of the stolen livestock its fair market value, or to the owner of the stolen agricultural product the production costs and fair market value as determined by the court upon consultation with the Department of Agriculture. Failure to make such payments shall be deemed a failure to pay a fine and punished accordingly, which may include, but shall not be limited to, the confiscation of a defendant's personal property such as the vehicle, or vehicles, or any equipment used in the theft. If a defendant is found unable to pay due to financial hardship, the court may require, but not be limited to: the auctioning of all personal property confiscated in accordance with this Section, or the performing of Alternative Community Service hours credited against the fine, or reimbursement imposed, or both, pursuant to Article 6 of Chapter 80, Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 43.75. Theft of Dog or Cat, When a Felony of the Second Degree.

It shall be theft punishable as a felony of the second degree, for any person:

(a) To steal any dog or cat for the purpose of or with the intent of holding the same for ransom or a reward for the return thereof; or

(b) To demand payment of a reward, ransom, or any thing of value for the return to the rightful owner of any dog or cat which is stolen, lost or strayed; or

(c) To refuse to return of a dog or a cat which is stolen, lost or strayed to the rightful owner except upon payment of a reward or ransom; or

(d) To steal any dog or cat for the purposes of killing or maiming the same; or

(e) To steal any dog for purpose of, or with intent of using the dog for any dog fight or fight with any other animals which could result in injury to the dog.

CLRC COMMENT: No change.

ARTICLE 2

RETAIL THEFT

§ 43.80. General Definitions.

For the purposes of this Article, the words and phrases defined in §§ 43.82 through 43.92 have the meanings ascribed to them in those sections unless a contrary meaning is clear from the context.

CLRC COMMENT: No change.

§ 43.81. Conceal Defined.

To *conceal* merchandise means that although there may be some notice of its presence, that merchandise is not visible through ordinary observation.

CLRC COMMENT: No change.

§ 43.82. Full Retail Value Defined.

Full Retail Value means the merchant's stated or advertised price of the merchandise.

CLRC COMMENT: No change.

§ 43.83. Merchandise Defined.

Merchandise means any item of tangible personal property.

CLRC COMMENT: No change.

§ 43.84. Merchant Defined.

Merchant means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchise or independent contractor of such owner or operator.

CLRC COMMENT: No change.

§ 43.85. Minor Defined.

Minor means a person who is less than eighteen (18) years of age, is unemancipated and resides with his parents or legal guardian.

CLRC COMMENT: No change.

§ 43.86. Person Defined.

Person means any natural person or individual.

CLRC COMMENT: No change.

§ 43.87. Peace Officer Defined.

Peace Officer has the meaning ascribed to that term in § 5.55 of the Criminal Procedure Code.

CLRC COMMENT: No change.

§ 43.88. Premises of a Retail Mercantile Establishment Defined.

P*remises of a Retail Mercantile Establishment* includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

CLRC COMMENT: No change.

§ 43.89. Shopping Cart Defined.

Shopping Cart means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

CLRC COMMENT: No change.

§ 43.90. Under-Ring Defined.

Under-Ring means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

CLRC COMMENT: No change.

§ 43.91. Retail Theft; Defined.

A person is guilty of *theft* if he knowingly:

(a) takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise;

(b) alters, transfers or removes any label, price tag, marking, indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of depriving the merchant of the full retail value of such value of merchandise;

(c) transfers any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise;

(d) under-rings with the intention of depriving the merchant of the full retail value of the merchandise; or

(e) removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal.

CLRC COMMENT: No change.

§ 43.92. Presumptions.

If any person:

(a) conceals upon his person or among his belongings, unpurchased merchandise displayed, held, stored or offered for sale in a retail mercantile establishment; and

(b) removes that merchandise beyond the last station for receiving payments for that merchandise in that retail mercantile establishment, such person shall be presumed to have possessed, carried away or transferred such merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

CLRC COMMENT: No change.

§ 43.93. Detention.

Any merchant who has reasonable grounds to believe that a person has committed retail theft may detain such person, on the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) to request identification;

(b) to verify such identification;

(c) to make reasonable oral inquiry as to whether such person has in his possession unpurchased merchandise and, to make reasonable investigation of the ownership of such merchandise;

(d) to inform a peace officer of the detention of the person and surrender custody of that person to a peace officer; or

(e) in the case of a minor, to immediately inform a peace officer and the parents or guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of such minor to such person.

CLRC COMMENT: No change.

§ 43.94. Affirmative Defense.

A detention, as permitted in this Article, does not constitute an arrest or unlawful restraint, as defined in § 22.35 of this Code, nor shall it render the merchant liable to the person so detained unless said detention is done unreasonably or without proper cause or justification.

CLRC COMMENT: No change.

§ 43.94.1. Severability.

If any part of this Article is declared invalid by a court, then the remainder of this Article shall still be in effect.

CLRC COMMENT: No change.

§ 43.95. Unlawful Use of Theft Detection Shielding *or* Deactivation Devices.

This Section defines and penalizes the distribution *or* possession of a detection shielding device *or* any tool *or* device designed to remove a theft detection device from merchandise prior to purchase for the intent to commit (*or* aid *or* abet) theft. A person who activates an anti-shoplifting device may be lawfully detained in a reasonable manner for a reasonable period of time.

(a) A person is guilty of unlawful distribution of a theft detection shielding device when he knowingly manufactures, sells, offers for sale *or* distributes in any way any laminated *or* coated bag intended to shield merchandise from detection by an electronic *or* magnetic theft detector.

(b) A person is guilty of unlawful possession of a theft detection shielding device when he knowingly possesses any laminated *or* coated bag *or* device intended to shield merchandise from detection by an electronic *or* magnetic theft detector, with the intent to commit (*or* aid *or* abet) theft.

(c) A person is guilty of unlawful possession of a theft detection device deactivator *or* remover when he knowingly possesses any tool *or* device designed to allow *or* capable of allowing the deactivation *or* removal from any merchandise of any theft detection device with the intent to use such tool *or* device to deactivate any theft detection device on, *or* to remove any theft detection device from, any merchandise without the permission of the merchant *or* person owning *or* lawfully holding said merchandise.

(d) A person is guilty of unlawful distribution of a theft detection device deactivator *or* remover when he knowingly manufacturers, sells, offers for sale *or* distributes in any way any tool *or* device designed to allow, *or* capable of allowing the deactivation *or* removal from any merchandise of any theft detection device without the permission of the merchant *or* person owning *or* lawfully holding said merchandise.

(e) A person is guilty of unlawful deactivation *or* removal of a theft detection device when he intentionally deactivates in a retail establishment a theft detection device on, *or* removes a theft detection device from, merchandise prior to purchase.

(f) Any person convicted for violating the provisions of Subsections (a), (b), (c), (d) *or* (e) of this Section where the value of the merchandise is *less than* Five Hundred Dollars ($500) is guilty of a petty misdemeanor. Any person convicted for violating the provisions of Subsections (a), (b), (c), (d) *or* (e) of this Section where the value of the merchandise is *more than* Five Hundred Dollars ($500) is guilty of a misdemeanor.

(g) The activation of an anti-shoplifting *or* inventory control device as a result of a person exiting the establishment *or* a protected security device within the area within the establishment *shall* constitute reasonable cause for the detention of the person so exiting by the owner *or* operator of the establishment *or* by an agent *or* employee of the owner *or* operator, provided notice has been posted to advise the patrons that the establishment utilizes anti-shoplifting *or* inventory control devices. Each such detention *shall* be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device *or* for the recovery of goods.

(h) Such taking into custody and detention by a law enforcement officer, security officer, merchant, merchant's employee *or* agent, if done in compliance with all the requirements of the foregoing Subsection, *shall* not render such law enforcement officer, security officer, merchant, merchant's employee *or* agent, criminally *or* civilly liable, including any liability for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress *or* defamation.

CLRC COMMENT: No change.

ARTICLE 3

ANTI-SKIMMING ACT

§ 43.96. Purpose.

This Article criminalizes the use of a scanning device *or* re-encoder to capture encoded information from a magnetic strip from a credit, debit, *or* other payment card and then places it on a different credit, debit, *or* other payment card with the intent to defraud.

CLRC COMMENT: No change.

§ 43.97. Short Title.

This Article *shall* be cited as the "Anti-Skimming Act."

CLRC COMMENT: No change.

§ 43.98. Definitions.

As used in this Article:

(a) *Scanning device* means a scanner, reader *or* any other electronic device that is used to access, read, scan, obtain, memorize *or* store, temporarily *or* permanently, information encoded on the magnetic strip *or* stripe of a payment card.

(b) *Re-encoder* means an electronic device that places encoded information from the magnetic strip *or* stripe of a payment card onto the magnetic strip *or* stripe of a different payment card.

(c) *Payment card* means a credit card, charge card, debit card, hotel key card, stored value card *or* any other card that is issued to an authorized card user and that allows the user to obtain, purchase *or* receive goods, services, money *or* anything else of value from a merchant.

(d) *Merchant* is defined as an owner *or* operator of any retail mercantile establishment, *or* any agent, employee, lessee, consignee, officer, director, franchisee *or* independent contractor of such owner *or* operator. A *merchant* means

a person who receives from an authorized user of a payment card *or* someone the person believes to be an authorized user, a payment card *or* information from a payment card *or* what the person believes to be a payment card *or* information from a payment card as the instrument for obtaining, purchasing *or* receiving goods, services, money *or* anything else of value from the person.

(e) *Authorized card user* means any person with the empowerment, permission *or* competence to act in the usage of any payment card to include, but *not be limited to*, a credit card, debit card, hotel key card, stored value card *or* any other card that allows the user to obtain, purchase *or* receive goods, services, money *or* anything else of value from a merchant.

CLRC COMMENT: No change.

§ 43.99. Penalties.

(a) It is a felony of the third degree felony for a person to use:

(1) A scanning device to access, read, obtain, memorize *or* store, temporarily or permanently, information encoded on the magnetic strip *or* stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card *or* a merchant.

(2) A re-encoder to place information encoded on the magnetic strip *or* stripe of a payment card onto the magnetic strip *or* stripe of a different card without the permission of the authorized user of the card from which the information is being re-encoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card *or* a merchant.

(b) Any person who violates subparagraph (a)(1) *or* (2) a second *or* subsequent time commits a second degree felony.

CLRC COMMENT: No change.

CHAPTER 46

FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

ARTICLE

FORGERY AND FRAUDULENT PRACTICES

§ 46.10. Forgery; Defined & Punished.

(a) A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he:

(1) falsely makes a written instrument by drawing a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

(2) falsely completes a written instrument by transforming through adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(3) falsely alters a written instrument by change, without authorization by anyone entitled to grant it, of a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(4) induces another by deception to sign or execute a written instrument which is not what it has been represented to be; or

(5) utters any written instrument which he knows to be forged in a manner specified in Paragraphs (1), (2), (3) or (4).

(b) Written Instrument includes printing or any other method of recording information, money, coins, tokens, tickets, stamps, seals, credit cards, badges, trademarks and other symbols of value, right, privilege or identification.

(c) Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental agency, or part of an issue of stock, bonds or other instruments representing interests or claims against a corporate or other organization or its property. Forgery is a felony of the third degree if the writing is or purports to be a will, deed, contract, release, commercial instrument or other document evidencing, creating, transferring, altering, terminating or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

CLRC COMMENT: No change.

§ 46.15. Criminal Simulation; Defined & Punished.

A person commits a misdemeanor if, with intent to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess.

CLRC COMMENT: No change.

§ 46.20. Tampering With Recordable Documents; Defined & Punished.

A person commits a felony of the third degree if, with intent to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

CLRC COMMENT: No change.

§ 46.25. Tampering With Records to Deceive or Conceal; Defined & Punished.

A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with intent to deceive or injure anyone or to conceal any wrongdoing.

CLRC COMMENT: No change.

§ 46.30. Issuance of Dishonored Checks.

(a) Definitions. For the purpose of this section, the following terms have the meanings given them.

(1) *Check* means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(2) *Credit* means an arrangement or understanding with the drawee for the payment of a check.

(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) ~~$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 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.

(2) In a prosecution under this paragraph, the value of dishonored checks issued by the defendant in violation of this subsection within any six-month period may be aggregated and the defendant charged accordingly in applying this section.

(c) Proof of intent. Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

(1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

(2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection; or

(3) proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection.

Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within thirty (30) days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

(d) Proof of lack of funds or credit. If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

(e) Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

CLRC COMMENT: Grading values of offenses increased and second degree of offense created.

§ 46.35. Fraudulent Use of Credit Cards; Defined & Punished.

(a) A person commits an offense if he uses a credit card or the account number of a credit card account with the intent of obtaining property or services with knowledge that:

(1) the card or account number is stolen or forged;

(2) the card or account number has been revoked or cancelled; or

(3) for any other reason his use of the card is unauthorized.

(b) It is an affirmative defense to prosecution under Paragraph (3) of Subsection (a) if the defendant proves by a preponderance of the evidence that he had the ability and intended to meet all obligations to the issuer arising out of his use of the card.

(c) Credit card means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(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~~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).

CLRC COMMENT: Add offense levels and amend offense grading values.

§ 46.40. Deceptive Business Practices; Defined & Punished.

(a) A person commits a misdemeanor if in this course of business he:

(1) uses or possesses for a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

(3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) sells, offers or exposes for sale adulterated or mislabeled commodities. “Adulterated” means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulation, or, if none, as set by established commercial usage. “Mislabeled” means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulations or, if none, as set by established commercial usage;

(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof with the intent of promoting the purchase or sale of property or services;

(6) makes a false or misleading written statement with the intent of obtaining property or credit; or

(7) makes a false or misleading written statement with the intent of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(b) It is an affirmative defense to prosecution under Subsection (a) if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

CLRC COMMENT: No change.

§ 46.45. Bribery for Violation of Duty; Defined & Punished.

(a) A person commits a misdemeanor if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty or fidelity to which he is subject as:

(1) agent or employee of another;

(2) trustee, guardian, or other fiduciary;

(3) lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(4) officer, director, partner, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(5) arbitrator or other purportedly disinterested adjudicator or referee.

(b) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

(c) A person commits a misdemeanor if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this Section.

CLRC COMMENT: No change.

~~**§ 46.50. Rigging of Public Exhibitions; Defined; Failure to Report; Soliciting Punishment.**~~

~~(a) A person commits a misdemeanor if, with intent to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:~~

~~(1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or~~

~~(2) tampers with any person, animal or thing.~~

~~(b) A person commits a misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under Subsection (a).~~

~~A person commits a petty misdemeanor if he fails to report, with reasonable promptness, a solicitation to accept any benefit or to do any tampering, the giving or doing of which would be criminal under Subsection (a).~~

CLRC COMMENT: Recommendation to repeal 9 GCA § 46.50, which is related to greyhound racing as indicated in the Compiler comment, and now inapplicable as greyhound racing no longer exists in Guam.

§ 46.55. Defrauding Creditors; Defined & Punished.

(a) A person commits an offense, he:

(1) destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent to defeat enforcement of that security interest;

(2) sells, assigns, exchanges, secretes, injures, destroys or otherwise disposes of any property upon which he has previously executed a mortgage or any instrument that operates as such, with intent to defraud the mortgages or a purchaser thereof;

(3) secretes, removes, assigns, conveys or otherwise disposes of his property with intent to defraud a judgment creditor or to prevent that property from being made liable for the payment of his debts;

(4) with intent to defraud, buys, receives, conceals or aids in concealing personal property, knowing it or any interest therein to be hired, leased or held as collateral security; or

(5) Intentionally sells, mortgages, conveys, conceals or aids in concealing personal property received by him upon a written conditional sale or lease agreement, or any other written agreement by which it or any interest therein is held as collateral security, before performance of any conditions precedent to acquiring the title thereto (A) without the consent in writing of the conditional seller, lessor or other holder of the security interest or (B) without disclosure to any buyer or transferee of the existence and terms of the conditional sale, lease or security agreement.

(b) An offense under this Section is a felony of the third degree if the value of the property which is the subject of the offense exceeds Ten Thousand Dollars in value. Otherwise the offense is a misdemeanor.

CLRC COMMENT: No change.

§ 46.60. Fraud in Insolvency; Defined & Punished.

(a) A person commits a misdemeanor, if, with intent to defraud a creditor and with knowledge either that proceedings have been or are about to be instituted for the appointment of an administrator or that a composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he:

(1) conveys, transfers, removes, conceals, destroys encumbers or otherwise disposes of any part of or any interest in the debtor's estate;

(2) obtains any substantial part of or interest in the debtor's estate;

(3) presents to any creditor or to the administrator any writing or record relating to the debtor's estate or to a creditor's claim, knowing the writing or record to contain a false material statement;

(4) fails or refuses to disclose any information that he is required by law to furnish to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate; or

(5) misrepresents any information furnished to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate.

(b) As used in this Section, Aadministrator@ means an assignee or trustee for the benefit of creditors, a conservator, a receiver or any other person entitled to administer property for the benefit of creditors.

CLRC COMMENT: No change.

§ 46.65. Receiving Deposits in Failing Bank; Defined & Punished.

(a) As used in this Section, financial institution means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(b) An officer, manager or other person directing or participating in the direction of a financial institution commits a misdemeanor if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:

(1) due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and

(2) the person making the deposit or other payment is unaware of the precarious situation of the institution.

CLRC COMMENT: No change.

§ 46.70. Misapplication of Entrusted Funds; Defined & Punished.

(a) A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

(b) The offense is a misdemeanor if the amount involved exceeds $50; otherwise it is a petty misdemeanor.

(c) Fiduciary includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(d) Financial institution has the meaning provided in Subsection (a) of § 46.65.

CLRC COMMENT: No change.

§ 46.75. Procuring Execution of Financially Significant Instruments by Fraud, Defined & Punished.

A person commits a misdemeanor or if by deception he causes another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

CLRC COMMENT: No change.

§ 46.80. Impersonation; Identity Theft; Defined & Punished.

(a) A person commits an offense when that person:

(1) impersonates another or assumes a false identity and does an act in such assumed character or false identity to obtain a benefit for oneself or another, or to injure or defraud another;

(2) pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit for oneself or for another, or to injure or defraud another;

(3) impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;

(4) possesses or obtains any personal identifying information pertaining to another person, without the authorization of that person, and uses or attempts to use that information, or assists another person in using the information, for any unlawful purpose, including to:

(A) fraudulently obtain, or attempt to obtain, money, credit, goods, services, anything of value, or medical information in the name of another person;

(B) injure or defraud, or attempt to injure or defraud, another person;

(C) avoid, or attempt to avoid, the payment of debt or other legal obligation; *or*

(D) avoid, or attempt to avoid, prosecution for a crime in the name of the other person without the consent of that person.

(b) As used in this Section, *personal identifying information* means the name, address, telephone number, driver's license or driver's license number, social security card or social security number, passport or passport number, official government of Guam or other state identification card or number, mother's maiden name, demand deposit account number, savings account number, credit card or credit card number, or a debit card or debit card number, or any name or number that may be used, alone or in conjunction with any other information, to assume the identity of a person. The list in this Subsection is *not* exhaustive.

(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 ~~at least Five Thousand Dollars ($5,000.00); otherwise, it is a felony of the third degree~~ equal to or greater than Ten Thousand Dollars ($10,000.00).

(d) A person found guilty of violating any provisions of this Section shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of such violation. Financial loss may include any costs incurred by such victim in correcting the credit history of such victim, or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.

(e) In any case in which a person obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of Subsection (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did *not* commit the crime.

CLRC COMMENT: Add offense levels and amend offense grading values.

§ 46.85. Tampering with Vehicle Identification Number or Other Vehicle Identifiers.

A person commits a felony if he or she knowingly destroys, removes or conceals, or attempts to destroy, remove or conceal, any Vehicle Identification number (VIN) or other vehicle identifiers with intent to deceive or injure anyone or to conceal any wrongdoing including littering violations.

CLRC COMMENT: No change. (Note: this was added by PL 37-60:8 (Feb. 9, 2024)).

ARTICLE 2

TELEPHONE RECORDS; OBTAINING, SELLING, OR RECEIVING WITHOUT CONSENT

§ 46.90. Definitions.

As used in this Section:

(a) *Caller Identification Record* means a record that is delivered electronically to the recipient of a telephone call simultaneously with the reception of the telephone call and that indicates the telephone number from which the telephone call was initiated *or* similar information regarding the telephone call.

(b) *Customer* means a person who subscribes to telephone service.

(c) *Telephone Record* means a record in written, electronic *or* oral form, *except* a caller identification record and subscriber list information that is created by a telephone service provider and that contains any of the following information with respect to a customer:

(1) Telephone numbers that have been dialed by the customer.

(2) Telephone numbers pertaining to calls made to the customer.

(3) The time when calls were made by the customer *or* to the customer.

(4) The duration of calls made by the customer *or* to the customer.

(5) The location(s) from which calls were initiated by the customer *or* received from the customer.

(d) *Telephone Service* means the conveyance of two (2)-way voice communication in analog, digital *or* other form by any medium, including wire, cable, fiber optics, cellular, broadband personal communications services *or* other wireless technologies, satellite, microwave *or* at any frequency over any part of the electromagnetic spectrum. Telephone service includes the conveyance of voice communication over the Internet and telephone relay service.

(e) *Telephone Service Provider* means a person who provides telephone service to a customer.

CLRC COMMENT: No change.

§ 46.91. Prohibition on Use of Telephone Records.

No person may do any of the following:

(a) Obtain, attempt to obtain *or* conspire with another to obtain a telephone record that pertains to a customer who is a resident of Guam, without the customer's consent by doing any of the following:

(1) Making a false *or* deceptive statement to an employee, representative *or* agent of a telephone service provider.

(2) Making a false *or* deceptive statement to a customer of a telephone service provider.

(3) Accessing such customer's telephone record via the Internet.

(4) Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost *or* stolen *or* that has been obtained by fraud *or* contains a false, fictitious *or* fraudulent statement *or* representation.

(b) Ask another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner prohibited under this Section.

(c) Sell *or* offer to sell a telephone record obtained in a manner prohibited under this Section.

CLRC COMMENT: No change.

§ 46.92. Penalties:

(a) A person who violates this Section is guilty of a third degree felony, a fine *not to exceed* Ten Thousand Dollars ($10,000) *or* imprisonment *not to exceed* three (3) years *or* both, *if* the violation involves one (1) telephone record.

(b) A person who violates this Section is guilty of a second degree felony, a fine *not to exceed* Twenty-five Thousand Dollars ($25,000) *or* imprisonment *not to exceed* ten (10) years *or* both, *if* the violation involves two (2) *or* more telephone records.

(c) A person who violates this Section is guilty of a third degree felony, a fine *not to exceed* Fifty Thousand Dollars ($50,000) *or* imprisonment *not to exceed* fifteen (15) years *or* both, *if* the violation involves *more than* ten (10) telephone records.

CLRC COMMENT: No change.

§ 46.93. Additional Penalties.

(a) In addition to the penalties authorized under § 46.92, a person who violates this Section may be required to forfeit personal property used *or* intended to be used in the violation.

(b) In an action to enforce this Section, the court *shall* award to a person who is the subject of a telephone record involved in a violation of this Section all of the following:

(1) The amount of the person's pecuniary loss suffered because of a violation of this Section, *if* proof of the loss is submitted to the satisfaction of the court *or* One Thousand Dollars ($1,000), whichever is greater.

(2) The amount of any gain to the violator as a result of the violation.

CLRC COMMENT: No change.

§ 46.94. Exceptions.

This Section does *not* apply to any of the following:

(a) Action by a law enforcement agency in connection with the official duties of the law enforcement agency.

(b) A disclosure by a telephone service provider, *if* any, of the following applies:

(1) The telephone service provider reasonably believes the disclosure is necessary to do any of the following:

(A) Provide telephone service to a customer.

(B) Protect an individual *or* the telephone service provider from fraudulent, abusive *or* unlawful use of telephone service *or* a telephone record.

(2) The disclosure is made to the National Center for Missing and Exploited Children.

(3) The disclosure is authorized by Guam *or* federal law *or* regulation.

(4) The disclosure is related to testing the security procedures *or* systems of the telephone service provider for maintaining the confidentiality of customer information.

(5) The disclosure is to a government entity, *if* the telephone company provider reasonably believes that an emergency involving immediate danger of death *or* serious physical injury to any person justifies disclosure of the information.

(6) The disclosure is in connection with the sale *or* transfer of all *or* part of its business *or* the purchase *or* acquisition of a portion *or* all of a business *or* the migration of a customer from one (1) carrier to another.

(c) A disclosure pursuant to § 46.94 (b), *if* such disclosure is made reasonably and in good faith, notwithstanding any later determination that such action was *not* in fact authorized.

CLRC COMMENT: No change.

ARTICLE 3

MORTGAGE FRAUD

§ 46.100. Title.

This Act may be cited as the Mortgage Fraud Act.

CLRC COMMENT: No change.

§ 46.101. Definitions.

As used in this Act:

(a) *Mortgage lending process* means the process through which a person seeks *or* obtains a mortgage loan, including solicitation, application, *or* origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(b) *Mortgage loan*:

(1) means a loan *or* agreement made to extend credit to a person when the loan is secured by a deed, security deed, mortgage, security interest, deed of trust, *or* other document representing a security interest *or* lien upon any interest in one (1)-to-four (4) family residential property;

(2) includes the renewal *or* refinancing of any loan; and

(3) includes home equity loans.

(c) *Unlawful activity* means to directly engage in conduct *or* to solicit, request, command, encourage, *or* intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes *or* categories of crimes, *or* to attempt *or* conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged *or* indicted by any authority *or* is classified as a misdemeanor *or* a felony

(d) *Pattern of unlawful activity* means engaging in conduct which constitute the commission of at least three (3) episodes of unlawful activity, which episodes are *not* isolated, but have the same *or* similar purposes, results, participants, victims, *or* methods of commission, *or* otherwise are interrelated by distinguishing characteristics. Taken together, the episodes *shall* demonstrate continuing unlawful conduct and be related either to each other *or* to the enterprise. The most recent act constituting part of a pattern of unlawful activity as defined by this part *shall* have occurred within five (5) years of the commission of the next preceding act alleged as part of the pattern.

(e) *Sensitive personal identifying information* means any of the following information regarding an individual's:

(1) Social Security number;

(2) driver license number *or* other government issued identification number;

(3) financial account number *or* credit *or* debit card number;

(4) password *or* personal identification number *or* other identification required to gain access to a financial account *or* a secure website;

(5) automated *or* electronic signature;

(6) unique biometric data; and

(7) any other information that can be used to gain access to an individual's financial accounts *or* to obtain goods *or* services.

(f) *Value* means the value of the property, money, *or* thing obtained *or* sought to be obtained.

(g) *Person* includes any individual *or* entity capable of holding a legal *or* beneficial interest in property, including governmental entities.

(h) *Obtain* means to come into possession of, get, acquire or procure.

CLRC COMMENT: No change.

§ 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 Section 46.102(a) is guilty of a second degree felony.

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

§ 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) 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.

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

~~**§ 46.104. Mortgage Fraud Prosecutor and Investigators.**~~

~~(a) The Attorney General may employ:~~

~~(1) An attorney licensed to practice law who:~~

~~(A) has knowledge of the law related to mortgage fraud; and~~

~~(B) *if* possible, has a background *or* expertise in investigating and prosecuting mortgage fraud.~~

~~(2) At least two (2) investigators who have a background *or* expertise in investigating mortgage fraud.~~

~~(3) The attorney employed under Subsection (a) (1) has as that attorney's primary responsibility the prosecution of mortgage fraud.~~

~~(4) Each person employed under Subsection (b) *shall* have as that person's primary responsibility the investigation of mortgage fraud.~~

~~(5) clerks, interns, *or* other personnel to assist the attorney employed under Subsection (a) (1).~~

CLRC COMMENT: Repeal. The Attorney General has discretion and authority to hire prosecutors and investigators, without specific need for "mortgage fraud prosecutor and investigators"

ARTICLE 4

ANTI-PHISHING ACT

§ 46.401. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that phishing or pharming are acts that defraud someone by using a false website, or pretending to be a legitimate business on the web, and fraudulently obtaining identifying information. This Act enables lawsuits by internet service providers and owners of webpages or trademarks that are used without authorization in the conduct of a violation. It is the intent of *I Liheslatura* to ensure that phishing and pharming are illegal and that Guam has the ability to prosecute the bad actors that prey on the residents of Guam.

CLRC COMMENT: No change.

§ 46.402. Definitions.

As used in this Act:

(a) entity includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, or instrumentalities, or any other legal entity, whether for profit or not-for-profit;

(b) individual means a natural person;

(c) identifying information means any information that can be used to access an individual's financial accounts or to obtain goods and services, including, but not limited to, address, birth date, social security number, driver's license number, non-driver governmental identification number, telephone number, bank account number, student identification, credit or debit card number, personal identification number, unique biometric data, employee or payroll number, automated or electronic signature, computer image, photograph, screen name or password. The term does not include information that is lawfully obtained from publicly available information, or from federal or local government records lawfully made available to the general public;

(d) false pretenses means the representation of a fact or circumstance which is not true and is calculated to mislead;

(e) webpage means a location that has a single uniform resource locator (URL) with respect to the world wide web, or another location that can be accessed on the internet.

CLRC COMMENT: No change.

§ 46.403. Phishing and Pharming.

(a) Phishing. For the purposes of this Article 4, an individual or entity is guilty of phishing if, with intent to defraud or injure an individual, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone:

(1) the actor makes any communication under false pretenses purporting to be by or on behalf of a legitimate business, without the authority or approval of the business; and

(2) the actor uses that communication to induce, request, or solicit any person to provide identifying information or property.

(b) Pharming. For the purposes of this Article 4, an individual or entity is guilty of pharming if, with intent to defraud or injure an individual, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone:

(1) creates or operates a webpage that represents itself as belonging to or being associated with a legitimate business, without the authority or approval of such business, and that may induce any user of the internet to provide identifying information or property; or

(2) alters a setting on a user's computer or similar device or software program through which the user may search the internet and thereby causes any user of the internet to view a communication that represents itself as belonging to or being associated with a legitimate business, which message has been created or is operated without the authority or approval of such legitimate business and induces, requests or solicits any user of the internet to provide identifying information or property.

CLRC COMMENT: No change.

§ 46.404. Immunity for Disabling Phishing and Pharming Sites.

No internet registrar or internet service provider may be held liable under any provision of the laws of Guam for removing or disabling access to an internet domain name controlled or operated by such registrar or by such provider, or to content that resides on an internet website or other online location controlled or operated by such provider, and that such provider believes in good faith is used to engage in a violation of this Act.

CLRC COMMENT: No change.

§ 46.405. Violations.

(a) A person who violates this Act is guilty of a third degree felony, and is subject to a fine not to exceed Five Thousand Dollars ($5,000), or imprisonment not to exceed five (5) years, or both.

(b) The following persons may bring a civil action against a person who violates this Act:

(1) an internet service provider who is adversely affected by the violation;

(2) an owner of a webpage, computer server, or a trademark that is used without authorization in the violation; or

(3) the Attorney General.

(c) Except as provided by paragraph 3, a person permitted to bring a civil action may obtain either actual damages for a violation of this Act, or a civil penalty not to exceed One Hundred Fifty Thousand Dollars ($150,000) per violation of this Act.

CLRC COMMENT: No change.

§ 46.406. Applicability.

This Act shall apply to the discovery of a phishing or pharming incident that occurs on or after the effective date of this Act. This Act does not apply to a telecommunications provider's or internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

CLRC COMMENT: No change.

§ 46.407. 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.

CLRC COMMENT: No change.

§ 46.408. Effective Date.

This Act shall take effect one hundred twenty (120) days after the date of enactment.

CLRC COMMENT: No change.

ARTICLE 5

COMPUTER PROTECTION ACT

§ 46.501. Legislative Intent.

It is the intent of *I Liheslaturan Guåhan* to prohibit a person from using specified protected computers to relay or retransmit commercial electronic mail messages with the intent to deceive or mislead recipients, or an electronic mail service provider under specified circumstances; to prohibit a person from materially falsifying header information in commercial electronic mail messages under specified circumstances; to prohibit a person from registering for electronic mail accounts or domain names under specified circumstances; and to provide for specified penalties and fines.

CLRC COMMENT: No change.

§ 46.502. Definitions.

In this Act, the following words have the meanings indicated:

(a) *commercial electronic mail message* means an electronic message sent primarily for the purpose of commercial advertisement or promotion of:

(1) a commercial product;

(2) a commercial service;

(3) the content on an Internet website; or

(4) a website operated for a commercial purpose;

(b) *domain name* means any alphanumeric designation that is registered with or assigned by a domain name registrar, domain name registry, or other domain name registration authority as part of an electronic mail address on the internet;

(c) *electronic mail service provider* means any person, including an internet service provider, that is an intermediary in sending and receiving electronic mail, and that provides to the public the ability to send or receive electronic mail to or from an electronic mail account or online user account;

(d) *financial institution* means any financial institution of the type supervised under 11GCA, whether or not locally-chartered;

(e) *header information* means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mails, and any other information that appears in the line identifying or purporting to identify a person initiating the message, and technical information that authenticates the sender of an electronic mail message for network security or network management purposes;

(f) the term *initiate*, when used with respect to a commercial electronic mail message, means to originate or transmit the message or to procure the origination or transmission of the message, and *does not* include actions that constitute routine conveyances of such message;

(g) *internet* means the international computer network of both federal and nonfederal interoperable packet switched data networks;

(h) *internet protocol address* means the string of numbers by which a location on the internet is identified by routers or other computers connected to the internet;

(i) *materially falsified* means altered or concealed in a manner that would impair the ability of one of the following to identify, locate, or respond to a person who initiated an electronic mail message or to investigate an alleged violation of this Act:

(1) a recipient of the message;

(2) an internet access service processing the message on behalf of a recipient;

(3) a person alleging a violation of this Act; or

(4) a law enforcement agency;

(j) *multiple* means:

(1) more than ten (10) commercial electronic mail messages during a twenty four (24)-hour period;

(2) more than one hundred (100) commercial electronic mail messages during a thirty (30)-day period; or

(3) more than one thousand (1,000) commercial electronic mail messages during a one (1)-year period;

(k) *protected computer* means a computer used in intrastate or interstate communication;

(l) *routine conveyance* means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipients' addresses.

CLRC COMMENT: No change.

§ 46.503. Violations.

A person *may not* conspire to or knowingly:

(a) use a protected computer of another to relay or retransmit multiple commercial electronic mail messages with the intent to deceive or mislead recipients or an electronic mail service provider as to the origin of the message;

(b) materially falsify header information in multiple commercial electronic mail messages and intentionally initiate the transmission of the messages;

(c) register, using information that materially falsifies the identity of the actual registrant, for fifteen (15) or more electronic mail accounts or on-line user accounts of two or more domain names, and intentionally initiate the transmission of multiple commercial electronic mail messages from one or any combination of accounts or domain names;

(d) falsely represent the right to use five (5) or more internet protocol addresses and intentionally initiate the transmission of multiple commercial electronic mail messages from the internet protocol addresses;

(e) access a protected computer of another without authorization, and intentionally initiate the transmission of multiple electronic mail advertisements from or through the protected computer;

(f) violate Subsections (a), (b), (c), (d) or (e) of this Section by providing or selecting addresses to which a message was transmitted, knowing that:

(1) the electronic mail addresses of the recipients were obtained using an automated means from an internet website or proprietary online service operated by another person; and

(2) the website or online service included, at the time the addresses were obtained, a notice stating that the operator of the website or online service will *not* transfer addresses maintained by the website or online service to any other party for the purposes of initiating or enabling others to initiate electronic mail messages; or

(g) violate Subsections (a), (b), (c), (d) or (e) of this Section by providing or selecting electronic mail addresses of recipients obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

CLRC COMMENT: No change.

§ 46.504. Penalties.

(a) A person who violates § 46.503 (a), (b), (c), (d) or (e) is guilty of a third degree felony~~, and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars ($5,000), or both~~.

(b) A person who violates § 46.503 (a), (b), (c), (d) or (e) involving the transmission of more than two hundred fifty (250) commercial electronic mail messages during a twenty-four (24) hour period; two thousand five hundred (2,500) commercial electronic mail messages during any thirty (30)-day period; or twenty five thousand (25,000) commercial electronic mail messages during any one (1)- year period is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(c) A person who violates § 46.503 (c) or (d) involving twenty (20) or more electronic mail accounts, or ten (10) or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from the accounts or using the domain names is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(d) A person who violates § 46.503 (a), (b), (c), (d) or (e) that causes a loss of One Thousand Dollars ($1,000) or more during any one (1)-year period is guilty of a third degree felony~~, and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars ($5,000), or both~~.

(e) A person who violates § 46.503 (a), (b), (c), (d) or (e) in concert with three (3) or more other persons as the leader or organizer of the action that constitutes the violation is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(f) A person who violates § 46.503 (a), (b), (c), (d) or (e) in furtherance of a felony, or who has previously been convicted of an offense under the laws of Guam, another state, or under any federal law involving the transmission of multiple commercial electronic mail messages is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed ten (10) years or a fine not to exceed Twenty Five Thousand Dollars ($25,000), or both~~.

(g) A person who violates § 46.503 (f) or (g) is guilty of a misdemeanor ~~felony, and upon conviction is subject to imprisonment not to exceed one (1) year or a fine not to exceed Five Thousand Dollars ($1,000), or both~~.

CLRC COMMENT: Removal of duplicative language and for uniformity with 9 GCA Chapter 80 (Disposition of Offenders). Subsection (a) provides for a third degree felony base penalty without first offender exception. Subsections (b), (c), (e), and (f) provide for second degree felony base penalty. Subsection (d) provides for third degree felony base penalty. Subsection (g) imprisonment penalty for misdemeanor, but language stated offense is felony grade.

§ 46.506. Civil Action by Attorney General.

(a) An action brought under this Subsection *shall* be commenced within two (2) years after the commission of the act.

(b) The Attorney General may institute a civil action against a person who violates § 46.503 to recover a civil penalty not to exceed:

(1) $25,000 per day of violation; or

(2) *not less than* Two Dollars ($2.00) nor more than Eight Dollars ($8.00) per commercial electronic mail message initiated in violation of § 46.503.

(3) For any violation of this Act, the amount determined under paragraph (b) may *not* exceed Two Million Dollars ($2,000,000).

(c) The Attorney General may seek an injunction in a civil action to prohibit a person who has engaged in or is engaged in a violation of § 46.503 from engaging in the violation.

(d) The Attorney General may enforce criminal violations of this Act.

CLRC COMMENT: No change.

§ 46.507. Lawfulness of Electronic Mail Service Provider Policies.

Nothing in this Act shall be construed to have any effect on the lawfulness of the adoption, implementation, or enforcement by an electronic mail service provider of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages under any other provision of law.

CLRC COMMENT: No change.

§ 46.508. 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.

CLRC COMMENT: No change.

ARTICLE 6

COMPUTER SPYWARE PROTECTION ACT

§ 46.601. Title.

This Act may be cited as the "Computer Spyware Protection Act."

CLRC COMMENT: No change

§ 46.602. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that spyware is a problem that adversely affects nearly every computer connected to the internet. Spyware is a catch-all term for computer programs that can track computer users' movements online. There are hundreds of programs that range from innocuous "ad-ware," which generates pop-up advertisements, to more dangerous programs that can record a user's keystrokes to gather personal information, such as credit card numbers and passwords, without their knowledge, and forward this information to another entity without the consumer's consent. Spyware is a serious problem that can create substantial privacy risks, increase the risk of identity theft, and cause serious degradation to personal and business computers that can cost millions of dollars in lost productivity.

It is the intent of *I Liheslatura* to protect owners and operators of computers on Guam from the use of spyware and malware that is deceptively or surreptitiously installed on the owner's or the operator's computer.

CLRC COMMENT: No change

§ 46.603. Definitions.

(a) *Cause to be copied* means to distribute or transfer computer software, or any component thereof. Such term *shall not* include providing:

(1) a transmission, routing, provision of intermediate temporary storage, or caching of software;

(2) a storage or hosting medium, such as a compact disk, website, or computer server through which the software was distributed by a third party; or

(3) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which the user of the computer located the software.

(b) *Computer software* means a sequence of instructions written in any programming language that is executed on a computer. Computer software *does not* include a data component of a web page that is *not* executable independently of the web page.

(c) *Computer virus* means a computer program or other set of instructions that is designed to degrade the performance of, or disable, a computer or computer network, and is designed to have the ability to replicate itself on other computers or computer networks without the authorization of the owners of those computers or computer networks.

(d) *Damage* means any significant impairment to the integrity or availability of data, software, a system, or information.

(e) *Execute*, when used with respect to computer software, means the performance of the functions or the carrying out of the instructions of the computer software.

(f) *Intentionally deceptive* means any of the following:

(1) an intentionally and materially false or fraudulent statement;

(2) a statement or description that intentionally omits or misrepresents material information in order to deceive an owner or operator of a computer;or

(3) an intentional and material failure to provide a notice to an owner or operator regarding the installation or execution of computer software for the purpose of deceiving the owner or operator.

(g) *Internet* means the global information system that is logically linked together by a globally unique address space based on the internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this Subsection.

(h) *Owner* or *operator* means the owner or lessee of a computer, or a person using such computer with the owner or lessee's authorization, but *does not* include a person who owned a computer prior to the first retail sale of the computer.

(i) *Message* means a graphical or text communication presented to an authorized user of a computer.

(j) *Person* means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(k) *Personally identifiable information* means any of the following information if it allows the entity holding the information to identify the owner or operator of a computer:

(1) the first name or first initial in combination with the last name;

(2) a home or other physical address including street name;

(3) a personal identification code in conjunction with a password required to access an identified account, other than a password, personal identification number or other identification number transmitted by an authorized user to the issuer of the account or its agent;

(4) a social security number, tax identification number, driver's license number, passport number, or any other government-issued identification number; or

(5) an account balance, overdraft history, or payment history that personally identifies an owner or operator of a computer.

CLRC COMMENT: No change

§ 46.604. Prohibitions, Use of Software.

It is unlawful for a person who is *not* an owner or operator of a computer to cause computer software to be copied on such computer knowingly or with conscious avoidance of actual knowledge or willfully, and to use such software to do any of the following:

(a) modify, through intentionally deceptive means, settings of a computer that control any of the following:

(1) the web page that appears when an owner or operator launches an internet browser or similar computer software used to access and navigate the internet;

(2) the default provider or web proxy that an owner or operator uses to access or search the internet; or

(3) an owner's or an operator's list of bookmarks used to access web pages;

(b) collect, through intentionally deceptive means, personally identifiable information through any of the following means:

(1) the use of a keystroke-logging function that records all or substantially all keystrokes made by an owner or operator of a computer and transfers that information from the computer to another person;

(2) in a manner that correlates personally identifiable information with data regarding all or substantially all of the websites visited by an owner or operator, other than websites operated by the person providing such software, if the computer software was installed in a manner designed to conceal from all authorized users of the computer the fact that the software is being installed;

(3) by extracting from the hard drive of an owner's or an operator's computer, an owner's or an operator's social security number, tax identification number, driver's license number, passport number, any other government-issued identification number, account balances, or overdraft history for a purpose unrelated to any of the purposes of the software or service described to an authorized user;

(c) prevent, through intentionally deceptive means, an owner's or an operator's reasonable efforts to block the installation of or execution of, or to disable, computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer without the authorization of an authorized user;

(d) intentionally misrepresent that computer software will be uninstalled or disabled by an owner's or an operator's action;

(e) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus computer software installed on an owner's or an operator's computer;

(f) enable use of an owner's or an operator's computer to do any of the following:

(1) accessing or using a modem or internet service for the purpose of causing damage to an owner's or an operator's computer, or causing an owner or operator, or a third party affected by such conduct to incur financial charges for a service that the owner or operator did not authorize;

(2) opening multiple, sequential, stand-alone messages in an owner's or an operator's computer without the authorization of an owner or operator, and with knowledge that a reasonable computer user could not close the messages without turning off the computer or closing the software application in which the messages appear;

provided, that this Subsection *shall not* apply to communications originated by the computer's operating system, originated by a software application that the user chooses to activate, originated by a service provider that the user chooses to use, or presented for any of the purposes described in §46.606;

(3) transmitting or relaying commercial electronic mail or a computer virus from the computer, where the transmission or relaying is initiated by a person other than the authorized user and without the authorization of an authorized user;

(g) modify any of the following settings related the computer's access to, or use of, the internet:

(1) settings that protect information about an owner or operator for the purpose of taking personally identifiable information of the owner or operator;

(2) security settings for the purpose of causing damage to a computer; or

(3) settings that protect the computer from the uses identified in Subsection (f) of this Section.

(h) prevent, without the authorization of an owner or operator, an owner's or an operator's reasonable efforts to block the installation of, or to disable, computer software by doing any of the following:

(1) presenting the owner or operator with an option to decline installation of computer software with knowledge that, when the option is selected by the authorized user, the installation nevertheless proceeds;

(2) falsely representing that computer software has been disabled;

(3) requiring in an intentionally deceptive manner the user to access the internet to remove the software with knowledge or reckless disregard of the fact that the software frequently operates in a manner that prevents the user from accessing the internet;

(4) changing the name, location or other designation information of the software for the purpose of preventing an authorized user from locating the software to remove it;

(5) using randomized or intentionally deceptive filenames, directory folders, formats, or registry entries for the purpose of avoiding detection and removal of the software by an authorized user;

(6) causing the installation of software in a particular computer directory or computer memory for the purpose of evading authorized users' attempts to remove the software from the computer; or

(7) requiring, without the authority of the owner of the computer, that an authorized user obtain a special code or download software from a third party to uninstall the software.

CLRC COMMENT: No change.

§ 46.605. Other Prohibitions.

It is unlawful for a person who is *not* an owner or operator of a computer to do any of the following with regard to the computer:

(a) induce an owner or operator to install a computer software component onto the owner's or the operator's computer by intentionally misrepresenting that installing computer software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content; or

(b) using intentionally deceptive means to cause the execution of a computer software component with the intent of causing the computer to use such component in a manner that violates any other provision of this Article.

CLRC COMMENT: No change.

§ 46.606. Exceptions.

Sections 46.604 and 46.605 *shall not* apply to the monitoring of, or interaction with, an owner's or an operator's internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, network management, authorized updates of computer software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing computer software prescribed under this Article.

CLRC COMMENT: No change.

§ 46.607. Remedies.

(a) The Attorney General, an internet service provider or software company that expends resources in good faith assisting authorized users harmed by a violation of this Article, or a trademark owner whose mark is used to deceive authorized users in violation of this Article, may bring a civil action against a person who violates any provision of this Article to recover actual damages, liquidated damages of *at least* One Thousand Dollars ($1,000) per violation of this Article, not to exceed One Million Dollars ($1,000,000) for a pattern or practice of such violations, attorney fees, and costs.

(b) The court may increase a damage award to an amount equal to not more than three times the amount otherwise recoverable under subsection 1 if the court determines that the defendant committed the violation willfully and knowingly.

(c) The court may reduce liquidated damages recoverable under subsection 1, to a minimum of one hundred dollars, not to exceed one hundred thousand dollars for each violation if the court finds that the defendant established and implemented practices and procedures reasonably designed to prevent a violation of this Article.

(d) In the case of a violation of § 46.604(f)(1) that causes a telecommunications carrier or provider of voice over internet protocol service to incur costs for the origination, transport, or termination of a call triggered using the modem or internet-capable device of a customer of such telecommunications carrier or provider as a result of such violation, the telecommunications carrier may bring a civil action against the violator to recover any or all of the following:

(1) the charges such carrier or provider is obligated to pay to another carrier or to an information service provider as a result of the violation, including, but *not* limited to, charges for the origination, transport or termination of the call;

(2) costs of handling customer inquiries or complaints with respect to amounts billed for such calls;

(3) costs and a reasonable attorney's fee; and

(4) an order to enjoin the violation.

(e) For purposes of a civil action under Subsections (a), (b) and (c), any single action or conduct that violates more than one Subsection of this Article *shall* be considered multiple violations based on the number of such Subsections violated.

CLRC COMMENT: No change.

§ 46.608. Good Samaritan.

(a) No provider of computer software or of an interactive computer service may be held liable for identifying, naming, removing, disabling, or otherwise affecting a computer program through any action voluntarily undertaken, or service provided, where the provider:

(1) intends to identify accurately, prevent the installation or execution of, remove, or disable another computer program on a computer of a customer of such provider;

(2) reasonably believes the computer program exhibits behavior that violates this Act; and

(3) notifies the authorized user and obtains clear and conspicuous consent before undertaking such action or providing such service.

(b) A provider of computer software or interactive computer service is entitled to protection under this Section *only* if such provider:

(1) has established internal practices and procedures to evaluate computer programs reasonably designed to determine whether or not a computer program exhibits behavior that violates this Act; and

(2) has established a process for managing disputes and inquiries regarding misclassification or false positive identifications of computer programs. Nothing in this Section is intended to limit the ability of the Attorney General, or a District Attorney, to bring an action against a provider of computer software or of an interactive computer service.

CLRC COMMENT: No change.

CHAPTER 47

TRADEMARK COUNTERFEITING ACT

CLRC COMMENT: No change.

§ 47.10. Definitions.

For purposes of the Trademark Counterfeiting Act,

(a) the term '*registered mark*' means:

(1) a trademark or trade name registered in the United States and Trademark Office, or in any State, Commonwealth or Territory of the United States, or registered in Guam pursuant to §20401 *et. seq*. of Title 5, Guam Code Annotated, or in any other country, or protected by the *Amateur Sports Act of 1978,* 36 U.S.C. §380, or recognized by common law, whether or not the defendant knew such trademark or trade name was so registered or protected; and

(2) used without the consent of the registrant;

(b) the term '*counterfeit mark*' means:

(1) a spurious mark,

(i) that is used in connection with trafficking goods or services;

(ii) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office or registered with the Administrator of the Guam Economic Development and Commerce Authority ('GEDCA') and with the Department of Revenue and Taxation of the government of Guam, or in any other State, Commonwealth or Territory of the United States, whether or not the defendant knew such mark was so registered; and

(iii) the use of which is likely to cause confusion, to cause mistake, or to deceive; or

(2) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the *Lanham Act* are made available, but such term does not include any mark or designation used in connection with goods or services of which the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

(c) the term '*traffic*' means to transport, transfer, or otherwise dispose of, to another, in consideration for anything of value, or to make or obtain control of, with the intent to transport, transfer, or dispose of;

(d) the term '*Lanham Act*' means the Act entitled '*An Act To Provide For The Registration And Protection Of Trademarks Used In Commerce, To Carry Out The Provisions Of Certain International Conventions, And For Other Purposes*,' approved July 5, 1946 (15 U.S.C. §1051 *et. seq.);*

(e) the term *'cumulative retail sale value'* of counterfeit goods or services means a value equivalent to the cumulative price or fair market value of the article as of the time of the crime.

CLRC COMMENT: No change.

§ 47.20. Counterfeiting of Registered Trademarks.

Whoever intentionally and knowingly reproduces, counterfeits, copies, or colorably imitates a registered mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements, to be specifically used in commerce upon, or in connection with the sale, offering for sale, distribution, or advertising of goods or services or in connection with such use, shall be guilty of the crime of counterfeiting. The crime of counterfeiting shall be punishable as follows:

(a) Misdemeanor. A person shall be convicted of a misdemeanor if the goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of Five Hundred Dollars ($500) or less.

(b) Third Degree Felony. A person shall be convicted of a third degree felony if the goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value in excess

of Five Hundred Dollars ($500) but less than One-Thousand Five Hundred Dollars ($1,500).

(c) Second Degree Felony. A person shall be convicted of a second degree felony if the goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of One Thousand Five Hundred Dollars ($1,500) or more.

CLRC COMMENT: No change.

§ 47.30. Trafficking of Counterfeit Goods.

Whoever intentionally and knowingly transports, transfers, or otherwise disposes of counterfeit goods to another, in consideration for anything of value, or makes or obtains control of counterfeit goods with intent to transport, transfer, or dispose of such goods, shall be guilty of the crime of trafficking of counterfeit goods. Goods bearing a counterfeit mark in the possession of a person who intends personal use and not resale are permitted. The crime of trafficking of counterfeit goods shall be punishable as follows:

(a) Misdemeanor. A person shall be found guilty of a misdemeanor if the trafficked goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of Five Hundred Dollars ($500) or less.

(b) Third Degree Felony. A person shall be guilty of a third degree felony if the trafficked goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value in excess of Five Hundred Dollars ($500) but less than One Thousand Five Hundred Dollars ($1,500).

(c) Second Degree Felony. A person shall be guilty of a second degree felony if the trafficked goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of One Thousand Five Hundred Dollars ($1,500) or more.

CLRC COMMENT: No change.

§ 47.40. Aiding and Abetting the Trafficking of Counterfeit Goods.

A person is guilty of aiding or abetting the trafficking of counterfeit goods who:

(a) solicits a person to purchase counterfeit goods; or

(b) knowingly and for the purpose of trafficking of counterfeit goods, transports any person into, out of or within Guam, or who procures or pays for the transportation of any person into, out of or within Guam for the purpose of trafficking counterfeit goods.

CLRC COMMENT: No change.

§ 47.50. Defenses, Affirmative Defenses, and Limitations on Remedies.

All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the *Lanham Act*, (15 U.S.C. §1051 *et seq*.), shall be applicable in a prosecution under this Chapter.

CLRC COMMENT: No change.

§ 47.60. Enforcement.

(a) Except as otherwise provided in this Chapter, any goods to which a forged or counterfeit trademark or service mark is attached or affixed, or any tools or other reproduction materials for the reproduction of any specific forged or counterfeit trademark or service mark, which are produced or possessed in violation of this Chapter shall be seized by any law enforcement officer. Upon a determination by a preponderance of the evidence that any articles in the possession of the defendant in a prosecution under this Chapter bears a counterfeit mark, the Attorney General may obtain an order from the Court for the destruction of the counterfeit goods, unless the owner of the registered or protected trademark or service mark which has been forged or counterfeit approves a different disposition.

(b) Any personal property, including, but not limited to, cash, currency or monies received by or in connection with a violation of this Chapter, or any item, object, tool, machine, or vehicle of any kind, employed as an instrumentality in the commission of, or in aiding or abetting in the commission of the crime counterfeiting, trafficking in counterfeit goods, or any other violation of this Chapter, may be seized and is subject to forfeiture by the Courts of Guam.

CLRC COMMENT: No change.

§ 47.70. Restitution.

In addition to any punishment ordered under §§ 47.20, 47.30 and 47.40, the Court shall order any person found in violation of this Chapter to make restitution to the government of Guam or to the Customs and Quarantine Agency, as the case may be, for the cost of storage and destruction of the counterfeit or forged goods. Such person shall be jointly and severally liable for any restitution.

CLRC COMMENT: No change.

§ 47.80. Protection for Landlords.

No owner, officer, employee, or agent who provides, rents, leases, licenses, or sells real property upon which a violation of § 47.20 or § 47.30 occurs, and who is charged with a violation of § 47.40, shall be subject to criminal penalty under this Chapter unless he or she is proven to have actual knowledge that the mark is counterfeit and is either a principal to the offense or an accessory.

CLRC COMMENT: No change.

CHAPTER 48

NOTIFICATION OF BREACHES OF PERSONAL INFORMATION

§ 48.10. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that both public and private entities on Guam have a duty to safeguard personal information that, *if* stolen *or* publicized, may result in crimes such as fraud and identity theft. The anonymity of the global internet, that transcends the borders of sovereign nations, makes it possible for unscrupulous individuals to profit from the theft of personal information and never be brought to justice for their crimes *or* made to pay restitution. Therefore, it is incumbent upon all entities that are entrusted with such data to maintain strong security systems to ensure that the personal information will always be protected.

It is the intent of *I Liheslatura* to ensure that the personal information of the residents of Guam is protected, by providing procedures for notification of security breaches related to personal information and thereby encouraging individuals and commercial entities, as defined by public law, to provide reasonable security for unencrypted personal information.

CLRC COMMENT: No change.

§ 48.20. Definitions.

As used in this Chapter:

(a) *Breach of the security of a system* means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security *or* confidentiality of personal information maintained by an individual *or* entity as part of a database of personal information regarding multiple individuals and that causes, *or* the individual *or* entity reasonably believes has caused *or* will cause, identity theft *or* other fraud to any resident of Guam.

Good faith acquisition of personal information by an employee *or* agent of an individual *or* entity for the purposes of the individual *or* the entity is *not* a breach of the security of the system, provided, that the personal information is *not* used for a purpose other than a lawful purpose of the individual *or* entity *or* subject to further unauthorized disclosure.

(b) *Entity* includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, *or* instrumentalities, *or* any other legal entity, whether for profit *or* not-for-profit.

(c) *Encrypted* means transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process *or* key, *or* securing the information by another method that renders the data elements unreadable *or* unusable.

(d) *Financial institution* has the meaning given that term in Section 6809(3) of Title 15, United States Code.

(e) *Individual* means a natural person.

(f) *Personal information* means the first name, *or* first initial, and last name in combination with and linked to any one *or* more of the following data elements that relate to a resident of Guam, when the data elements are *neither* encrypted *nor* redacted:

(1) Social Security number;

(2) Driver's license number *or* Guam identification card number issued in lieu of a driver's license; *or*

(3) Financial account number, *or* credit card *or* debit card number, in combination with any required security code, access code, *or* password that would permit access to a resident's financial accounts.

(4) The term *does not* include information that is lawfully obtained from publicly available information, *or* from Federal, State, *or* local government records lawfully made available to the general public.

(g) *Notice* means:

(1) Written notice to the postal address in the records of the individual *or* entity;

(2) Telephone notice;

(3) Electronic notice*; or*

(4) Substitute notice, *if* the individual *or* the entity required to provide notice demonstrates that the cost of providing notice will *exceed* Ten Thousand Dollars ($10,000), *or* that the affected class of residents to be notified *exceeds* five thousand (5,000) persons, or that the individual or the entity does *not* have sufficient contact information *or* consent to provide notice as described in paragraphs 1, 2, *or* 3. Substitute notice consists of any two (2) of the following:

(A) E-mail notice *if* the individual *or* the entity has e-mail addresses for the members of the affected class of residents;

(B) Conspicuous posting of the notice on the Website of the individual *or* the entity, *if* the individual *or* the commercial entity maintains a Website; and

(C) Notice to major Guam media.

(h) *Redact* means alteration *or* truncation of data such that *no more than* the following are accessible as part of the personal information:

(1) five (5) digits of a Social Security Number, *or*

(2) The last four (4) digits of a driver's license number, Guam identification card number *or* financial account number.

CLRC COMMENT: No change.

§ 48.30. Disclosure of Breach of Security of Computerized Personal Information by an Individual *or* Entity.

(a) General Rule. An individual *or* entity that owns *or* licenses computerized data that includes personal information *shall* disclose any breach of the security of the system following discovery *or* notification of the breach of the security of the system to any resident of Guam whose unencrypted and unredacted personal information was *or* is reasonably believed to have been accessed and acquired by an unauthorized person and that causes, *or* the individual *or* entity reasonably believes has caused *or* will cause, identity theft *or* other fraud to any resident of Guam. *Except* as provided in subsection (d) of this Section, o*r* in order to take any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the system, the disclosure *shall* be made without unreasonable delay.

(b) Encrypted Information. An individual *or* entity must disclose the breach of the security of the system *if* encrypted information is accessed and acquired in an unencrypted form, *or if* the security breach involves a person with access to the encryption key and the individual *or* entity reasonably believes that such breach has caused *or* will cause identity theft *or* other fraud to any resident of Guam.

(c) An individual *or* entity that maintains computerized data that includes personal information that the individual *or* entity *does not* own or license *shall* notify the owner *or* licensee of the information of any breach of the security of the system as soon as practicable following discovery, *if* the personal information was, *or* if the entity reasonably believes was, accessed and acquired by an unauthorized person.

(d) Notice required by this Section may be delayed *if* a law enforcement agency determines and advises the individual *or* entity that the notice will impede a criminal *or* civil investigation, *or* homeland *or* national security. Notice required by this Section must be made without unreasonable delay after the law enforcement agency determines that notification will no longer impede the investigation *or* jeopardize national *or* homeland security.

CLRC COMMENT: No change.

§ 48.40. Procedures Deemed in Compliance with Security Breach Requirements.

(a) Information Privacy *or* Security Policy. An entity that maintains its own notification procedures as part of an information privacy *or* security policy for the treatment of personal information and that are consistent with the timing requirements of this Chapter *shall* be deemed to be in compliance with the notification requirements of this Chapter *if* it notifies residents of Guam in accordance with its procedures in the event of a breach of security of the system.

(b) Compliance with Federal requirements.

(1) A financial institution that complies with the notification requirements prescribed by the Federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice is deemed to be in compliance with this Chapter.

(2) An entity that complies with the notification requirements *or* procedures pursuant to the rules, regulations, procedures, *or* guidelines established by the entity's primary *or* functional Federal regulator *shall* be in compliance with this Chapter.

CLRC COMMENT: No change.

§ 48.50. Violations.

(a) A violation of this Chapter that results in injury *or* loss to residents of Guam may be enforced by the Office of the Attorney General.

(b) *Except* as provided by § 48.40 of this Chapter, the Office of the Attorney General *shall* have exclusive authority to bring action and may obtain either actual damages for a violation of this Chapter *or* a civil penalty *not to exceed* One Hundred Fifty Thousand Dollars ($150,000) per breach of the security of the system *or* series of breaches of a similar nature that are discovered in a single investigation.

CLRC COMMENT: No change.

§ 48.60. Applicability.

This Chapter *shall* apply to the discovery *or* notification of a breach of the security of the system that occurs on *or* after the effective date of this Chapter.

CLRC COMMENT: No change.

§ 48.70. Effective Date.

This Chapter *shall* take effect one hundred twenty (120) days after the date of enactment.

CLRC COMMENT: No change.

§ 48.80. Preemption.

This Chapter deals with subject matter that is of island-wide concern, and it is the intent of *I Liheslatura* that this Chapter *shall* supersede and preempt all rules and regulations regarding the matters expressly set forth in this Chapter.

CLRC COMMENT: No change.

CHAPTER 52

PERJURY AND OFFENSE AGAINST THE INTEGRITY OF OFFICIAL PROCEEDINGS

§ 52.10. Definitions.

As used in this Chapter:

~~(a) *official function* and *public servant* have the meanings provided for those terms by § 49.10.~~

(~~b~~a) *material statement* means a statement which affected or could have affected the course or outcome of a proceeding, regardless of its admissibility under rules of evidence.

(b) *official function* means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.

(c) *official proceeding* means a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer an oath or cause it to be administered, including any referee, hearing officer, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

~~(d) *public record* means any record, document, thing belonging to, or received or kept by the Government of Guam or any governmental instrumentality within the Territory.~~

(d) *public servant* means any officer, member, or employee of the legislative, executive, or judicial branches of Guam or of any governmental instrumentality within Guam, any juror, any persons exercising the functions of any such position, or any referee, arbitrator, hearing officer, or other person authorized by law to hear or determine any question or controversy. It includes a person who has been elected, appointed or designated to become a public servant, and, in the case of a juror, a person who has been drawn, empaneled, or designated to attend as a prospective grand or petit juror.

(e) *statement* means any ~~non-trivial~~ representation, but includes a representation of opinion, belief or other state of mind ~~is a statement~~ only if it clearly relates to a state of mind apart from or in addition to the facts which it otherwise represents.

(f) *statement under oath* means

(1) a statement made pursuant to a swearing, an affirmation, or any other mode authorized by law of attesting to the truth of that which is stated; and

(2) a statement made on a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

~~(3) testimony means oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.~~

(g) *testimony* means oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.

CLRC COMMENT: For clarification of the section, subsection (a) definitions of "official function" and "public servant" in are inserted directly into this section from § 49.10. Subsection (d) definition of "public record" in is stricken as the term is not used in this chapter. Subsection (e) term "non-trivial" is stricken as it creates a potential conflict with "statement" as used in § 52.15 (Perjury) and § 52.20 (False Statement Under Oath); other amendents are for consistency with source MPC § 241.0 (Definition of Statement). Subsection (f)(3) definition of "testimony" is erroneously placed and is renumbered as a new subsection.

§ 52.15. Perjury; Defined & Punished.

(a) A person is guilty of perjury if, under oath in an official proceeding, he makes a false statement which is material and which he does not believe to be true.

(b) Whether a statement is material is a question of law.

(c) Perjury is a felony of the third degree.

CLRC COMMENT: No change.

§ 52.20. False Statement Under Oath; Defined & Punished.

A person is guilty of a misdemeanor if he makes a false statement under oath which he does not believe to be true and:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is intended to mislead a public servant in performing his official function.

CLRC COMMENT: No change.

§ 52.25. Unavailability of Certain Defenses.

It is not a defense to any offense defined in § 52.15 or § 52.20 that:

(a) the oath was administered or taken in an irregular manner;

(b) the authority or jurisdiction of the person administering the oath was defective, if the defect was excusable under any statute or rule of law;

(c) the statement was subject to a proper objection, whether or not such objection was made; or

(d) the defendant mistakenly believed the falsification to be immaterial, where materiality of the statement is an element of the offense.

CLRC COMMENT: No change.

§ 52.30. Unsworn Falsifications; Defined & Punished.

A person is guilty of a misdemeanor if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

(a) any ~~written~~ false statement, in written or electronic format, ~~of his own~~ which he does not then believe to be true; or

(b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

CLRC COMMENT: Amendments are for consistency with source MPC § 241.3 (Unsworn Falsification to Authorities) and to update the section to include electronic statements.

§ 52.40. Intimidation of Witnesses by Extortion; Defined & Punished.

A person is guilty of a felony of the third degree if, by any threat which would constitute a means of committing the offense of theft by extortion under this Code if such threat were employed to obtain property, he:

(a) attempts to induce any person to refrain from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; or

(b) attempts to induce any person who has been or may be properly called as a witness in any official proceeding to give false testimony in, to withhold testimony or information from, or to fail to attend, any such proceeding.

CLRC COMMENT: No change. However, 9 GCA § 43.40 (Theft by Threatening) and § 49.50 (Unlawful Influence by Extortion) will be added to cross-reference comment.

§ 52.45. Witness Bribery: Solicitation: Definitions; Punishment; Affirmative Defenses.

A person is guilty of a felony of the third degree if he:

(a) offers, confers upon, or agrees to confer upon, any person any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to any offense; provided that it is an affirmative defense to a prosecution under this Subsection that the benefit was honestly offered or conferred as restitution or indemnification for harm done in the circumstances of the offense;

(b) offers, confers upon, or agrees to confer upon, any person who has been or may be properly called as a witness in an official proceeding any benefit as consideration for giving false testimony or information, for withholding testimony or information from, or for failing to attend, any such official proceeding;

(c) solicits, accepts or agrees to accept any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information, relating to an offense; provided that it is an affirmative defense to a prosecution under this Subsection that the benefit was honestly claimed as restitution or indemnification for harm done in the circumstances of the offense; or

(d) solicits, accepts or agrees to accept, in connection with any official proceeding to which he has been or may be properly called as a witness, any benefit as consideration for giving false testimony or information in, for withholding testimony or information from, or for failing to attend, any such official proceeding.

CLRC COMMENT: No change.

§ 52.50. Tampering with Witnesses: Defined and Punished.

A person is guilty of a misdemeanor if he attempts to induce any person to give false testimony in or to withhold testimony from any official proceeding to which he has been or may be properly called as a witness, or to fail to attend any official proceeding to which he has been lawfully called as a witness.

CLRC COMMENT: No change.

§ 52.55. Falsifying Evidence; Defined & Punished.

A person is guilty of a ~~felony of the third degree~~ misdemeanor if, believing that an official proceeding has been or is about to be instituted, he prepares, offers in evidence or uses any record, document or thing in any form, including written or electronic format, knowing it to be false and with intent to mislead a public servant who is or may be engaged in the proceeding.

CLRC COMMENT: Amendment reduces the offense level to a misdemanor. Felony level in this section is inconsistent with source MPC § 241.7 (Tampering with or Fabricating Physical Evidence), which is a misdemeanor, and is inconsistent with § 52.60 (Destroying Evidence), which is a misdemeanor. The other amendment updates the section to include electronic form of evidence.

§ 52.60. Destroying Evidence; Defined & Punished.

A person is guilty of a misdemeanor if, believing that an official proceeding has been or is about to be instituted, he destroys, conceals or removes any record, document or thing in any form, including written or electronic format, with intent to impair its availability in the proceeding.

CLRC COMMENT: Amendment updates the section to include electronic format.

§ 52.65. Unlawful Communication With Jurors; Defined & Punished.

A person is guilty of a misdemeanor if, with intent to influence the outcome of an official proceeding, he communicates with a juror, except as may be authorized by law.

CLRC COMMENT: No change.

CHAPTER 55

INTERFERENCE WITH GOVERNMENT OPERATIONS AND LAW ENFORCEMENT

§ 55.10. Tampering With Public Records; Defined & Punished.

(a) Public record means any record, document or thing in any form, including written or electronic format, belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government.

(~~a~~b) A person commits ~~an~~ the offense of tampering with public records if he:

(1) knowingly makes a false entry in, or false alteration of a public record ~~any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government~~;

(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in ~~Paragraph (1)~~ Subsection (a); or

(3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of a public record ~~any such record, document or thing~~.

(~~b~~c) An offense under this Section is a misdemeanor unless the defendant's intent is to defraud or injure anyone, in which case the offense is a felony of the third degree.

CLRC COMMENT: Amendments provide a clearer definition of "public record" and update the section to include electronic form.

§ 55.15. Hindering Apprehension or Prosecution; Defined & Punished.

(a) A person is guilty of the offense of hindering apprehension or prosecution if, with intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of an offense, he:

(1) harbors or conceals the other person;

(2) provides or aids in providing a weapon, transportation, disguise or other means of avoiding discovery or apprehension;

(3) conceals, alters or destroys ~~and~~ any physical evidence that might aid in the discovery, apprehension or conviction of such person;

(4) warns such person of impending discovery or apprehension, except that this Paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;

(5) obstructs by force, intimidation or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person; or

(6) aids such person to safeguard the proceeds of or to profit from such offense.

(b) Hindering apprehension or prosecution is a felony of the third degree if the defendant knows that the charge made or liable to be made against the other person is a felony of the first or second degree. Otherwise the offense is a misdemeanor.

CLRC COMMENT: Amendments are for clarification and correction.

§ 55.20. False Alarms; Defined & Punished.

(a) A person is guilty of a misdemeanor when, with knowledge of its falsity, he causes a false alarm of fire or other emergency to be transmitted to any organization that responds to emergencies involving danger to life or property.

(b) A person is guilty of a misdemeanor when, with knowledge of its falsity, he initiates or circulates a false alarm of fire or other emergency knowing that the alarm is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm.

(c) A person is guilty of a felony of the third degree if the false alarm involves a report or warning of an impending bombing, hostage situation, person armed with a deadly weapon as defined by 9 GCA § 16.10, or any other incident that elicits an immediate or heightened response by law enforcement or emergency services.

CLRC COMMENT: New subsection (b) adds a new misdemeanor offense. New subsection (c) adds a new felony offense. Amendments update, broaden and strengthen prohibitions against false alarms. Reference N.J. § 2C: 33-3 (False public alarms).

§ 55.25. Making False Reports; Defined & Punished.

(a) A person commits a ~~misdemeanor~~ felony of the third degree who~~: (a)~~ knowingly gives false information to any ~~law enforcement~~ peace officer with intent to induce such officer to believe that another person has committed an offense~~;~~.

(b) A person commits a misdemeanor who:

(1) reports to ~~law enforcement authorities~~ any peace officer an offense or other incident within their concern knowing that it did not occur, or

~~(c)~~(2) makes a report which purports to furnish ~~law enforcement authorities~~ any peace officer with information relating to an offense or incident when he knows that he has no such information.

CLRC COMMENT: Guam's "swatting" law. Subsection (a) amendment elevates false reporting of a criminal offense by another person to a felony to update and strengthen this prohibition. Reference N.J. 2C:28-4 (Falsely incriminating another). The offenses are kept as misdemeanors. Other amendments replace law enforcement officer or authority with peace officer for consistency within this chapter.

§ 55.30. Impersonating a Public ~~Officer~~Servant or Peace Officer; Defined & Punished.

(a) A person commits a misdemeanor if he falsely pretends to hold a position in the public service with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(b) A person commits a felony of the third degree if he falsely pretends to hold a position as a peace officer or member or employee or agent of any organization or association of peace officers with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

CLRC COMMENT: New subsection (b) adds impersonation of a peace officer as a separate felony level offense to update and strengthen this prohibition. Reference NJ § 2C:28-8 (Impersonating a public servant or law enforcement officer).

§ 55.35. Resisting Arrest of Self or Others; Defined & Punished.

A person is guilty of a misdemeanor when, with intent to prevent or delay the arrest of himself of another person by one whom he knows or reasonably should know to be a peace officer acting in an official capacity, he prevents or delays that arrest by the use or threat of force or by physical obstruction. For purposes of this Section, a peace officer shall include apprehending officers designated under Article 2 of 10 GCA Chapter 51, as well as peace officers as defined under ~~9 GCA § 1.70~~ 8 GCA § 5.55.

CLRC COMMENT. Amendment provides clarification as 9 GCA § 1.70 directly references 8 GCA § 5.55.

§ 55.40. Disarming of a Peace Officer; Defined & Punished.

(a) A person commits the ~~crime~~ offense of disarming a peace officer, as defined by 17 GCA § 51101 if such person intentionally:

(1) removes, or attempts to remove, a firearm, deadly weapon, or less-lethal weapon, including any blunt impact, chemical, or conducted energy device, used in the performance of his or her official duties from the person of a peace officer while said officer is acting within the scope of his or her official duties; or

(2) deprives, or attempts to deprive, a peace officer of said officer's use of a firearm, deadly weapon, or any other equipment described in Subsection (a)(1) of this Section while the officer is acting within the scope of his or her official duties.

(b) The provisions of this Section *shall not* apply when:

(1) the defendant does not know or could not reasonably have known that the person he or she disarmed was a peace officer; or

(2) the peace officer was engaged in an incident involving felonious conduct by the peace officer at the time the defendant disarmed said officer.

(c) An offense under this Section is a felony of the third degree, unless the defendant's intent is to injure anyone, in which case the offense is a felony of the second degree.

CLRC COMMENT: Amendment using "offense" is for consistency with (c).

§ 55.45. Obstructing Governmental Functions; Defined & Punished.

A person commits a misdemeanor if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

CLRC COMMENT. No change.

§ 55.50. Damaging, Stealing or Receiving Stolen Government Generators, Telephones, or Emergency or Utility Equipment.

A person commits a felony in the second degree if he intentionally damages or steals any generator, power pole, power line, telephone, telephone line, telephone facility, water meter, or other emergency or utility equipment or vehicle owned or installed by the government of Guam, its agencies or instrumentalities.

CLRC COMMENT: Amendment adds "vehicle" for clarification and certainty.

§ 55.51. Receiving Stolen Government Generators, Telephones or Emergency Utility Equipment.

A person commits a felony in the second degree if he receives any stolen generator, power pole, power line, telephone, telephone line, telephone facility, water meter, or other emergency or utility equipment or vehicle owned or installed by the government of Guam, its agencies or instrumentalities, knowing such item is stolen.

CLRC COMMENT: Amendment adds "vehicle" for clarification and certainty.

§ 55.60. Public Water, Unlawful Use During Period of Emergency.

(a) Upon the declaration by the Governor of a state of emergency as the result of a disaster that threatens the public water supply, it shall be a petty misdemeanor for any person to use water supplied by the ~~Public Utility Agency of Guam~~ Guam Waterworks Authority for any unauthorized use.

(b) During a state of emergency public water is authorized to be used for purposes of public health, safety and welfare. Any use of the public water during a state of emergency for a use not pertaining to public health, safety and welfare shall not be authorized. Such unauthorized uses shall include, but not be limited to, washing motor vehicles, windows, streets, sidewalks and buildings or irrigating or watering ornamental plants, shrubs, flower, lawns or golf courses.

(c) In addition to any other penalty imposed by the court upon conviction under this section, a conviction arising from unauthorized use of water for a business or commercial purpose shall be punished by a fine of not less than One Thousand Dollars ($1,000) nor more than Twenty-Five Thousand Dollars ($25,000).

(d) No state of emergency proclaimed by the Governor shall be for a period of more than fifteen (15) days. The Governor may proclaim successive states of emergency if he deems such proclamation to be in the public interest.

CLRC COMMENT: Public Utility Agency of Guam is now Guam Waterworks Authority.

§ 55.65. Failure to File a Complete Partial-Birth Abortion and Abortion Report.

A person commits a misdemeanor who knowingly fails to file a complete individual abortion report for each abortion with the Territorial Registrar of Vital Statistics within seven (7) days from the date of the abortion.

CLRC COMMENT: No change.

CHAPTER 70

MISCELLANEOUS CRIMES

ARTICLE 1

PROTECTING ANIMAL WELFARE AND SAFETY (PAWS) ACT (PUGUA'S LAW)

§ 70.10. Title.

Sections 70.10 through 70.85 of this Article may be cited as the *Protecting Animal Welfare and Safety (PAWS) Act* or *Pugua's Law.*

CLRC COMMENT: No change.

§ 70.15. Definitions.

For the purposes of §§ 70.10 through 70.85 of this Article:

(a) *Animal* means any nonhuman mammal, bird, reptile, amphibian, or fish, and is inclusive of, but not limited to, livestock and domestic animals.

(b) *Caregiving agency* means an animal shelter, humane society, or other animal care agency that has as its principal purpose the humane treatment of animals, and that has temporary custody of an animal after the animal has been seized.

(c) *Domestic animal* means any animal, other than livestock, that is owned by a person or in a person's possession.

(d) *Good animal husbandry* includes, but is not limited to, the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, or the ear cropping and tail docking of dogs, according to accepted practices of veterinary medicine or animal husbandry.

(e) *Guardian* means a person who has possession, title, ownership interest, or other legal interest in an animal.

(f) *Livestock* means cattle, carabao, swine, deer, sheep, goats, equine, and poultry raised for labor, food, or other purposes.

(g) *Minimum care* means care reasonably sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the guardian, includes, but is not limited to, the following requirements:

(1) open or adequate access to food of reasonable quantity and quality to allow for normal growth or maintenance of body weight;

(2) open or adequate access to potable water of reasonable quality and quantity to satisfy the animal's needs;

(3) access to a structure reasonably sufficient to protect the animal from wind, rain, sun, or other environmental or weather conditions;

(4) veterinary and other care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect, or disease;

(5) for a domestic animal, continuous access to an area:

(A) with reasonably adequate space for exercise necessary for the health of the animal;

(B) with air temperature reasonably suitable for the health of the domestic animal;

(C) with adequate ventilation;

(D) with regular diurnal lighting cycles of either natural or artificial light; and

(E) kept reasonably clean and free from excess waste or other contaminants that could affect the health of the animal(s).

(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.~~

(i) *Person* means an individual, corporation, trust, partnership, association, or any other legal entity.

(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~~.

(k) *Physical trauma* means fractures, cuts, punctures, bruises, burns, or other wounds.

(l) *Possession* means to have physical custody or to exercise dominion with intent of ownership or control over an animal.

(m) *Serious physical injury* means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of a limb, body part, or bodily organ.

(n) *Torture* means an action taken with the intent of inflicting or prolonging pain or suffering.

(o) *Suffering* means fear, agitation, severe depression or stress, or other forms of severe emotional or mental distress.

CLRC COMMENT: Subsection (h) removal of restriction on who may authorize an officer. Subsection (j) removal of injuries difficult to prove. No other subsections amended.

§ 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 an offense punishable by a fine of not more than Five Hundred Dollars ($500) per offense~~ a violation.

(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 (Disposition of Offenders).

§ 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.

§ 70.30. Aggravated Animal Abuse.

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

(1) tortures an animal; or

(2) causes the death of an animal under circumstances demonstrating malice aforethought.

(b) Aggravated Animal Abuse is a second degree felony.

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

CLRC COMMENT: No change.

§ 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.

(e) Nothing in this Section shall constitute a prohibition or ban on the possession, lawful importation/exportation, breeding, or selling of any breed of dog.

(f) Veterinarians and/or physicians and/or health professionals are required to report suspected animal fighting incidents, excluding cockfighting as authorized by law, that come to their attention through the provision of medical services to an animal to the Guam Police Department within five (5) days of learning of animal fighting incidents. Failure to do so shall result in potential loss of licensure if deemed appropriate by the appropriate licensure agencies. Any veterinarians, physicians, or health professionals making a report under this Subsection shall be immune from any civil or criminal liability by reason of making the report, unless the report was made in bad faith.

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.

§ 70.40. Sexual Assault of an Animal.

(a) A person commits the crime of Sexual Assault of an Animal if the person knowingly:

(1) touches or contacts, or causes an object or another person to touch or contact, the mouth, anus, or sex organs of an animal or animal carcass for the purpose of arousing or gratifying the sexual desire of a person; or

(2) causes an animal or animal carcass to touch or contact, the mouth, anus, or sex organs of a person for the purpose of arousing or gratifying the sexual desire of a person.

(b) Sexual Assault of an Animal is a third degree felony.

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

CLRC COMMENT: No change.

§ 70.45. Bodily Alterations, Disablements, or Removals.

(a) It is unlawful for any person to remove or permanently alter or disable, or cause or procure to be removed or permanently altered or disabled, any part or organ, or the function of any part or organ, of an animal, except as necessary for proper and lawful veterinary care, population control, or good animal husbandry; provided, that population control or good animal husbandry is under the supervision or instruction of a licensed veterinarian, and:

(1) all surgical procedures must be performed or supervised by a licensed veterinarian in accordance with the American Veterinarian Medical Association policy, and the veterinarian shall counsel pet owners about the matter before agreeing to perform these surgeries and shall record said consultation in the pet's record; and

(2) any person performing procedures for population control of livestock or good animal husbandry for livestock may do so without direct supervision of a licensed veterinarian; provided, that said person has been properly trained by a licensed veterinarian and properly conducts said procedures in accordance with generally accepted industry

standards.

(b) A violation of Subsection (a) of this Section is a misdemeanor.

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

CLRC COMMENT: No change.

§ 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 (Disposition of Offenders).

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

~~(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.

§ 70.60. Leaving Animals Unattended in Motor Vehicles; Penalty; Authority of Officers.

(a) For the purposes of this Section:

(1) *Vehicle* means a car, truck, camper, trailer, or other form of transportation in which an animal can be transported.

(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.

(b) A person shall not confine an animal in a vehicle in a manner that could reasonably be expected to threaten the health, safety, and well-being of the animal due to conditions that include, but are not limited to, extreme temperatures, lack of adequate ventilation, lack of food or water, or confinement with a vicious or dangerous animal, or other circumstances that could reasonably be expected to cause suffering, disability, physical injury, or death to the animal.

(c) After making reasonable efforts to locate the vehicle's owner, an animal control officer, peace officer, law enforcement officer, or firefighter may enter a vehicle by any reasonable means to protect the health, safety and well-being of an animal who is endangered by confinement in a vehicle. A peace officer, law enforcement officer, animal control officer, or firefighter may enter the vehicle for the sole purpose of assisting the animal and may not search the vehicle or seize items found in the vehicle unless otherwise permitted by law.

(d) An animal control officer, peace officer, law enforcement officer, or firefighter who removes or otherwise retrieves an animal under this Section shall:

(1) leave written notice in a secure and conspicuous location on or in the vehicle bearing the officer's or firefighter's name and title, and the address of the location where the animal may be retrieved; and

(2) take the animal to a veterinary clinic or animal shelter for a health screening and treatment.

(e) An animal control officer, peace officer, law enforcement officer, or firefighter who removes or otherwise retrieves an animal from a vehicle under this Section shall be immune from criminal or civil liability that might otherwise result from the removal.

(f) Penalties.

(1) A person in violation of Subsection (b) of this Section shall be subject to a fine of not more than Five Hundred Dollars ($500).

(2) The owner may retrieve the animal removed by an officer or firefighter only after payment of all charges that have accrued for the maintenance, care, medical treatment, and impoundment of the animal.

CLRC COMMENT: Unnecessary language removed from subsection (a)(2). No other subsections amended.

§ 70.65. Defenses; Exceptions.

(a) It is an affirmative defense in a prosecution for violation of animal abuse under § 70.25 (a) of this Article if:

(1) the defendant reasonably and humanely caused the death of the animal to end its immediate and intractable suffering; or

(2) the animal posed a present and immediate danger to the safety of people, and the defendant took reasonable measures necessary to protect against serious bodily harm, or death, to themselves or other people, livestock, or domestic animals.

(b) Ownership shall not be a defense.

(c) Guardianship shall not be a defense.

(d) Trespass by an animal shall not be a defense.

(e) Corporations and other nonhuman legal entities may be concurrently charged for acts in violation of any animal protection offense committed by their employees or agents when the act is committed in the normal course and scope of the employment or agency.

(f) It is no defense to the crime of animal abandonment that the defendant abandoned the animal at or near an animal shelter, veterinary clinic, or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

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

(1) the proper shooting or taking of game in such manner and at such times as is allowed or provided by the laws of Guam;

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

(~~3~~2) the proper killing of animals used for food~~, except for dogs and cats, in accordance~~ with the law;

(4) the proper disinfestation of rodents and brown tree snakes;

(5) animals properly used for education or research purposes by, or under the oversight of, the Guam Community College or the University of Guam; provided, that proper Institutional Review Board procedures and all applicable local and federal laws are followed;

(6) euthanasia as properly conducted by a licensed veterinarian, or individual authorized by § 70.70 of this Article, and done in accordance with local law and generally accepted industry practice;

(7) the proper disinfestation of animals deemed a disease vector and threat to public health by the Department of Public and Social Services; provided, that disinfestation is done in accordance with established procedures approved by said Department;

(8) the proper disinfestation of species deemed invasive to Guam by the Guam Invasive Species Council; provided, that disinfestation is done in accordance with established procedures approved by said Council.

(A) Subsection (g)(8) of this Section shall not pertain to cats or dogs, except as authorized by the Director of the Department of Agriculture, and such disinfestation efforts are done in accordance with accepted practices of veterinary medicine and procedures approved by the Council.

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. No other subsections amended.

§ 70.70. Euthanasia Procedures.

(a) Unless otherwise authorized by law, sodium pentobarbital and such other agents as may be specifically approved by the Guam Board of Allied Health Examiners shall be the only methods used for euthanasia of an animal. A lethal solution

shall be used in the following order of preference:

(1) intravenous injection by hypodermic needle;

(2) intraperitoneal injection by hypodermic needle;

(3) intracardial injection by hypodermic needle, but only if performed on heavily sedated, anesthetized, or comatose animals; or

(4) solution or powder added to food.

(b) An animal may be tranquilized with an approved and humane substance before euthanasia is performed.

(c) Succinylcholine chloride, curare, curariform mixtures, strychnine, nicotine, chloral hydrate, magnesium, potassium, or any substance which acts as a neuromuscular blocking agent, or any chamber which causes a change in body oxygen, may not be used on any animal for the purpose of euthanasia.

(d) Euthanasia shall be performed only by a licensed veterinarian, trained animal control officers, or an employee or agent, in accordance with § 121906 of Article 19, Part 2, Chapter 12, Title 10, Guam Code Annotated.

(e) An animal may not be left unattended between the time euthanasia procedures are first begun and the time that death occurs, and the animal's body may not be disposed of until a licensed veterinarian, or person, as authorized by § 121906 of Article 19, Part 2, Chapter 12, Title 10, Guam Code Annotated, confirms death.

(f) Notwithstanding the provisions of this Section or any other law to the contrary, whenever an emergency situation exists which requires the immediate euthanasia of a seriously injured, dangerous, or severely diseased animal, a peace officer or veterinarian may humanely destroy the animal.

(g) The remains of the euthanized animal shall be properly disposed of in accordance with Guam law.

(h) Any violation of this Section is a misdemeanor.

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

CLRC COMMENT: No change.

§ 70.75. Pre-Trial Provisions.

(a) Reporting and Immunity.

(1) The following designees, having a good-faith belief that any animal with whom the designee comes in contact has suffered a violation of this Article or that any person with whom the designee comes in contact has committed a violation of this Article, may report, or cause a report to be made to the Animal Control Division of the Department of Agriculture:

(A) a police officer; or

(B) a licensed social worker.

(2) Any designee making a report under this Subsection shall not be required to report such information communicated by a person if the communication is privileged under Guam law.

(3) Any designee making a report under this Subsection shall be immune from any civil or criminal liability by reason of making the report, unless the report was made in bad faith.

(b) Law Enforcement Policies.

(1) All officers as defined in § 70.15 of this Article have the duty and responsibility to enforce this Article to the extent authorized by law.

(2) All volunteer animal control officers, volunteer conservation officers, or similar volunteer law enforcement officers, whose positions are established by the government of Guam, have the duty and responsibility to enforce this Article to the extent authorized by law.

(c) Seizure.

(1) Search and Seizure With a Warrant. If there is probable cause to believe that an animal is being subjected to treatment in violation of this Article, an officer, after obtaining a search warrant, shall enter the premises where the animal is located and seize the animal.

(2) Search and Seizure Without a Warrant. If an officer witnesses a situation in which the officer determines that an animal's life is in jeopardy and immediate action is required to protect the animal's health or safety, the officer may seize the animal without a warrant. The officer shall immediately take an animal seized under this Subsection to a licensed veterinarian or animal shelter for medical attention to stabilize the animal's condition and to assess the health of the animal.

(3) Any person or facility receiving an animal seized pursuant to this Subsection shall provide the animal with minimum care.

(4) An officer shall not be liable for any damages for an entry under this Subsection.

(5) Any guardian of an animal that is impounded pursuant to this Subsection shall, within seventy-two (72) hours following the seizure, be given written notice of the seizure and legal remedies available to the guardian. The written notice shall be posted at the place of seizure, or delivered to an employee at the place of impoundment, or by registered mail if the guardian is known.

(6) The guardian from whom an animal is seized pursuant to this Subsection shall, within seventy-two (72) hours following the seizure, be given written notice of the seizure and legal remedies available to the guardian. The notice shall, at a minimum, be given by posting at the place of seizure, or by delivery to a person residing or working at the place of seizure, or by certified mail. Such notice shall include:

(A) the name, business address, and telephone number of the law enforcement entity responsible for seizing the animal;

(B) a description of the seized animal;

(C) the authority and purpose for the seizure, including the time, place, and circumstance under which the animal was seized; and

(D) a statement that the guardian is responsible for the cost of care for an animal who was lawfully seized, and that the guardian will be required to post a bond with the court to defray the cost of care or the animal will be deemed forfeited.

(d) Costs-of-Care Bonds.

(1) An animal that has been impounded pending outcome of a criminal case, including charges under this Article, may prevent disposition of the animal by a caregiving agency that has temporary custody of the animal by posting a bond with the court in an amount the court determines is sufficient to provide for the animal's minimum care for at least thirty (30) days, including the day on which the animal was taken into custody.

(A) Such bond shall be filed with the court within ten (10) days after the animal is impounded. If a bond is not so posted, the animal shall be deemed forfeited and the custodial caregiving agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals. At the end of the time for which expenses are covered by the bond, if the owner, guardian, or person in possession of an animal, desires to prevent disposition of the animal by the custodial caregiving agency, a new bond shall be posted with the court within ten (10) days following the prior bond's expiration.

(B) If a new bond is not so posted, the animal shall be deemed forfeited and the custodial caregiving agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals.

(C) However, nothing in this Subsection shall prohibit the immediate disposition of the animal by euthanasia if, in the opinion of a licensed veterinarian, the animal is experiencing intractable extreme pain or suffering. The guardian shall be liable for all costs of providing minimum care, or disposal of the animal.

(2) If a bond has been posted in accordance with Subsection (d)(1) of this Section, the custodial caregiving agency may draw from the bond the actual reasonable costs incurred by the agency in providing minimum care to the seized animal from the date of initial seizure to the date of final disposition of the animal in the criminal action.

(e) Protective Orders.

(1) A mandatory restraining order is created against any person charged with a felony under this Article.

(2) The order may remain in effect from the time that the defendant is advised of their rights at arraignment or the defendant's first appearance before the court and informed of such order, until final disposition of the action.

(3) The order may restrain the defendant from contacting, harassing, molesting, intimidating, retaliating against, or tampering with:

(A) any animal(s) victimized by the acts charged;

(B) any guardian or owner, other than the defendant, of such animal(s); or

(C) any witness to the acts charged.

(4) Any restraining order issued pursuant to Subsection (e) of this Section, shall be on a standardized form prescribed by the Superior Court of Guam.

(5) A copy of the restraining order shall be provided to the protected parties.

(6) The court may include an animal in any protective order authorized by this Article.

CLRC COMMENT: No change.

§ 70.80. Sentencing Provisions.

(a) Community Service. In addition to any other sentence it may impose, the court may order the defendant to participate in community service. No such participation shall occur at any humane society, animal shelter, or other facility where an animal is present, unless first approved by said organization.

(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.

(2~~3~~) Treatment may include, but is not limited to, counseling and humane education classes.

(3~~4~~) Treatment may be conducted in-person or online.

(4~~5~~) All costs of the evaluation, care and treatment shall be borne by the defendant. However, if the court determines that the defendant is indigent, the government of Guam may provide access to government funded or government contracted service providers, if available.

(c) Education. The Department of Agriculture shall make available educational material and information regarding proper animal care and welfare to the defendant. At a minimum, such information shall be made available in printed form or online, as deemed appropriate by the Department of Agriculture.

(d) Forfeiture. In addition to any other sentence it may impose, the court shall require a defendant convicted under this Article to forfeit all legal interest of the defendant in the animal subjected to the violation. The court shall award all such interest to the animal to a caregiving agency.

(e) Contact with Animals.

(1) In addition to any other penalty imposed by law, a court may require a defendant convicted of a felony under this Article to not own, possess, or have custody or control of any animal for a minimum period of five (5) years on a first offense; and for a minimum period of fifteen (15) years on a second or subsequent offense.

(2) A violation of this Subsection is a petty misdemeanor and shall result in the forfeiture of the offender's interest in the animal.

(3) Notwithstanding any other provision of law, an officer may immediately seize any animal found to be kept in violation of this Subsection.

(f) Reimbursement of Costs to Caregiving Agency. In addition to any other sentence it may impose, the court shall require a defendant convicted under this Article to repay all reasonable costs incurred by any person or organization prior to judgment in seizing and providing minimum care for each animal subjected to mistreatment in violation of this Article.

(g) Restitution to Guardian. In addition to any other sentence it may impose, the court shall order that restitution be made by a defendant convicted under this Article to the guardian of any animal subjected to mistreatment by the defendant in violation of this Article. The measure for restitution shall be the actual pecuniary value of such loss, including, but not limited to, the actual veterinary expenses, special supplies, and other costs incurred by the animal's guardian in treating the animal and in attempting to restore the animal to good health or to otherwise ameliorate the effects of the criminal violation.

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.

§ 70.85. Civil Right of Action for the Wrongful Injury or Death of an Animal.

(a) Any person who, with no lawful authority, intentionally, knowingly, recklessly, or with criminal negligence causes physical injury to, or the death of, an animal shall be liable to the animal's guardian for the damages sustained by the guardian. The guardian of the animal may bring a civil action to recover such damages. Damages may include the pecuniary value of the animal; veterinary expenses incurred on behalf of the animal; any other expenses incurred by the guardian in attempting to ameliorate the effects of, or as a consequence of, the pain, suffering or injuries of the animal; any emotional distress and loss of companionship suffered by the guardian; all court costs and reasonable attorney's fees incurred in the prosecution of any action under this Section; and any other reasonable damages resulting from the physical injury or death of the animal.

(b) Restraining orders and other injunctive relief may be issued by the Superior Court of Guam as appropriate.

(c) The remedies provided in this Section are in addition to, and do not replace or supplant, any other remedies allowed by law.

(d) Commencement of a cause of action under this Section shall be brought within three (3) years from the date on which damages were first identified by the guardian.

CLRC COMMENT: No change.

ARTICLE 2

DISCRIMINATION IN HOUSING ACCOMMODATIONS

§ 70.210. Declaration of Policy.

It is hereby declared to be the policy of the territory of Guam in the exercise of its police power for the public safety, public health and general welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, sex or national origin and, to that end, to prohibit discrimination in housing by any person.

CLRC COMMENT: No change.

§ 70.220. Definitions.

When used in this Article:

(a) Discrimination or discriminatory housing practice means any difference in treatment based upon race, color, religion, sex or national origin, or any act that is unlawful under this Article;

(b) Financial institution includes any person, as defined herein, engaged in the business of lending money or guaranteeing losses;

(c) Housing accommodation or dwelling means any building, mobile home or trailer, structure or portion thereof which is occupied as or designed, or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure or portion thereof, or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this Subsection;

(d) Mortgage broker means an individual who is engaged in or who performs the business or services of a mortgage broker as the same are defined in the Government Code;

(e) Open market means the market which is informed of the availability for sale, purchase, rental or lease of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs or by any other advertising methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental or lease;

(f) Owner includes a lessee, sub-lessee, cotenant, assignee, managing agent or other person having the right of ownership or possession, or the right to sell, rent or lease any housing accommodation;

(g) Person includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations;

(h) Real property includes buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums; and

(i) Real estate broker or real estate salesman includes any individual, qualified by law, who, for a fee, commission, salary or for other valuable consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents or leases any housing accommodations, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collecting of a fee in connection with a contract whereby he undertakes or promote the sale, purchase, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

CLRC COMMENT: No change.

§ 70.230. Unlawful Practices.

In connection with any of the transactions set forth in this Section, which affect any housing accommodation on the open market or in connection with any public sale, purchase, rental or lease of any housing accommodation, it shall be unlawful within the Territory for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above, to:

(a) refuse to sell, purchase, rent or lease, or deny to or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(b) to discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities of services in connection therewith;

(c) to refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(d) to refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(e) to represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation, because of his race, color, religion or national origin, sex or place of birth;

(f) to make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form or application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to make a discrimination;

(g) to offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith;

(h) to induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, sex or national origin or place of birth in the area to be affected by such sale, purchase, rental or lease will or may result in either:

(1) the lowering of property values in the area;

(2) an increase in criminal or antisocial behavior in the area; or

(3) a decline in the quality of schools serving the area;

(i) to make any misrepresentations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for any of the above, or the sale, purchase, rental or lease of any housing accommodation in any area in the Territory for the purpose of including or attempting to induce any such listing or any of the above transactions;

(j) to engage in, or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest or create or play upon fear, with the purpose of either discouraging or inducing, or attempting to induce, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation;

(k) to retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this Article, or because he has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this Article;

(l) to aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this Article, or to obstruct or prevent any person from complying with the provisions of this Article, or any order issued thereunder;

(m) by canvassing, to commit any unlawful practices prohibited by this Article;

(n) otherwise to deny to, or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(o) for any bank, savings and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part, in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration or other terms or conditions of such loans or other financial assistance, because of the race, color, religion, sex or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance or of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; or

(p) to deny any qualified person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership or participation on account of race, color, religion, sex or national origin.

CLRC COMMENT: No change.

§ 70.240. Exemptions.

This Article shall not apply to:

(a) a religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society, which limits the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purposes to persons of the same religion, or which gives preference to such persons, unless membership in such a religion is restricted on account of race, color, sex or national origin;

(b) a private club not in fact open to the public, which, as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, and which limits the rental or occupancy of such lodgings to its members or gives preference to its members;

(c) any single-family house sold or rented by an owner; provided, that such private individual owner does not own more than three (3) such single-family houses at any one time; provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this Subsection shall apply only with respect to one such sale within any twenty-four month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or served on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at any one time; provided further, that the sale or rental of any such single-family house shall be excepted from the application of this Article only if such house is sold or rented:

(1) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent or any such broker, agent, salesman or person; and

(2) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of the provisions of § 70.47 of this Code; but nothing in this provision shall prohibit the use of attorneys, escrow

agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title; or

(d) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently or each other, if the owner actually maintains and occupies one of such living quarters as his residence.

CLRC COMMENT: No change.

§ 70.250. Procedure.

Any person aggrieved by an unlawful practice prohibited by this Article may file a complaint with the Attorney General within thirty (30) days after the aggrieved person becomes aware of the alleged unlawful practice, and in no event shall exceed more than sixty (60) days after the alleged unlawful practice occurred. The Attorney General or his duly authorized representative shall investigate each complaint and attempt to resolve such complaint. Failure to achieve a resolution acceptable to both parties and in compliance with this Article shall cause the Attorney General to commence prosecution.

CLRC COMMENT: No change.

§ 70.260. Other Remedies.

Nothing herein contained shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled.

CLRC COMMENT: No change.

§ 70.270. Penalties.

Any person violating any provision of this Article shall, upon conviction thereof, be guilty of a misdemeanor.

CLRC COMMENT: No change.

ARTICLE 3

THE GUAM SOCIAL HOST ACT AND POSSESSION OF CANNABIS BY PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE

§ 70.310. Title.

This Article shall be known and may be cited as The Guam Social Host Act.

CLRC COMMENT: No change.

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

(a) No person twenty-one (21) years or older shall knowingly give or otherwise make available any alcoholic beverage or cannabis to a person under the age of twenty-one (21) years. A person violates this Section who gives or otherwise makes available an alcoholic beverage or cannabis to a person under the age of twenty-one (21) with the knowledge that the person to whom the alcoholic beverage or cannabis is made available will violate this § 70.53.

(b) A person violates this Section who owns, occupies, or controls premises on which alcoholic beverages or cannabis are consumed by any person under twenty-one (21) years of age, and who knows of alcohol or cannabis consumption by persons under twenty-one (21) years of age on such premises, and who reasonably could have prohibited or prevented such alcohol or cannabis consumption.

(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

(2) in addition to the sentence referenced in Subsection (c)(1) the court *may* require the violator to make restitution for any damages to property or a person caused by a violation of this § 70.53, and *may* require participation in volunteer service to a community service agency.

(d) The prohibitions of this Section apply only to a person who is present and in control of the location at the time the consumption occurs. The prohibitions of this Section do not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.

(e) This Section *shall not* apply to any religious practice, observance, or ceremony.

(f) The violations of this Section and the resulting penalties prescribed herein, supra, are in addition to other violations of public law related to alcoholic beverages or cannabis.

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.

§ 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 ~~petty misdemeanor~~ violation 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.

ARTICLE 4

MISCELLANEOUS CRIMINAL OFFENSES

§ 70.410. Tattoos, Brands, Scarifications and Piercings; Minors; Violation; Classification; Anesthesia; Defense; Definition.

(a) It is unlawful to tattoo a person who is under eighteen (18) years of age without the physical presence of that person's parent or legal guardian.

(b) It is unlawful for a person who tattoos or pierces the body of another person to use a needle or ink more than once, or to use a needle that is not pre-sterilized or autoclaved.

(c) A person must be a licensed healthcare professional to administer any form of subcutaneous local anesthesia during the course of any procedure involving the branding, scarifying, tattooing or piercing of the body of another person.

(d) It is a defense to a prosecution for a violation of Subsection (a) that the person requested age identification, and relied in good faith on the accuracy of the information contained in the identification.

(e) A person who violates this Section is guilty of a misdemeanor.

(f) For the purposes of this Section, tattoo means any indelible design, letter, scroll, figure, symbol or other mark that is placed on or under the skin with ink or colors by the aid of needles or other instruments, and that cannot be removed without a surgical procedure or any design, letter, scroll, figure or symbol or other mark done by scarring on or under the skin.

CLRC COMMENT: No change.

§ 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 Pago 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.

~~**§ 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.

§ 70.440. Revealing Expunged Record Prohibited.

A person is guilty of a misdemeanor if he permits to be made public or reveals to any person not entitled to review it any official record of the court, Attorney General or any other entity of the government of Guam which has been expunged in accordance with § 271 of the Code of Civil Procedure or Chapter 11 of Title 8 GCA.

CLRC COMMENT: No change.

~~§ 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.

CHAPTER 71

THE GUAM GUN-FREE SCHOOL ZONE ACT OF 2004

§ 71.10. Title.

This Chapter shall be known, and may be cited, as >>The Guam Gun-Free School Zone Act of 2004''.

CLRC COMMENT: No Change

§ 71.20. Definitions.

As used in this Chapter, the following definitions shall apply:

(a) "School zone'' means an area in, or on the grounds of, a public or private school providing instruction in early childhood, kindergarten or grades 1 to 12, inclusive.

(b) "Firearm'' shall mean as defined in 10 GCA § 60100.

~~(c) "Concealed firearm'' shall mean as defined in 9 GCA § 60108(c).~~

CLRC COMMENT: Subsection (c) is unnecessary as the term "Concealed Firearm" is not used in this chapter.

§ 71.30. ~~Person Not Allowed to Possess Firearms~~ Possession of Firearms in a School Zone.

Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in ~~paragraph (a) of Subdivision~~ § 71.20(a) of this Chapter, shall be punished as specified in ~~Subdivision~~ § 71.60.

CLRC COMMMENT: Non-substantive clarifications.

§ 71.40. Prohibition on Discharge of Firearm.

It shall be unlawful for any person to discharge, or attempt to discharge, a firearm in a school zone, as defined in ~~paragraph (a) of Subdivision~~ § 71.20(a) of this Chapter. The prohibition contained in this ~~Subdivision~~ Section does not apply to the discharge of a firearm if the firearm is discharged in an area that is designated as a shooting range at a University or College.

CLRC COMMENT: Non-substantive clarifications.

§ 71.50. Firearms Prohibited on University or College Property.

~~(a)~~ It shall be unlawful for any person to bring or possess a ~~loaded~~ firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority. Notwithstanding § 71.80, a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this Section.

~~(b) It shall be unlawful for any person to bring or possess a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority. Notwithstanding Section § 71.80, a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this Section.~~

CLRC COMMENT: Subsections (a) and (b) are the same except for the word "loaded" in (a). Recommend deletion of "loaded" in (a) and deletion of (b) in its entirety.

§ 71.60. Punishment.

Any person who ~~violates~~ is convicted of violating § 71.30, § 71.40, or § 71.50 of this Act shall be guilty of a felony of the third degree and ~~any person who is convicted of an offense pursuant to § 71.30, § 71.40, or § 71.50~~ shall be sentenced as follows:

(a) For a first offense, the Court shall impose a sentence of imprisonment of no more than three (3) years, a fine of not less than One Thousand Dollars ($1,000.00), and mandatory community service of no less than one hundred and fifty (150) hours.

(b) In cases where the person has been convicted of felonies under any provision of this Chapter, the person shall be sentenced to a term of imprisonment which shall not be less than five (5) years and in addition, may be fined not more than Fifteen Thousand Dollars ($15,000.00). The sentence~~, if for a term of years,~~ shall include a special parole term of not less than one (1) year in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended, and probation shall not be granted. Sentence in these cases must also include mandatory community service of no less than one hundred fifty (150) hours unless the term of imprisonment is for life.

(c) The Court shall apply any minimum sentence, fine or community service specified in this Section, except in unusual cases where the interests of justice would best be served ~~by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment, fine or community service required in this Subdivision or~~ by granting probation or suspending the execution or imposition of sentence, fine or community service with conditions other than those set forth in this Section, in which case the Court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

CLRC COMMENT: Remove unnecessary verbiage.

§ 71.61. Information for Sentencing.

Except as otherwise provided in 9 GCA Chapter 80 ~~of Title 9 of the Guam Code Annotated~~, no limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which the Superior Court of Guam may receive and consider for the purpose of imposing an appropriate sentence under this Chapter.

CLRC COMMENT: Non-substantive clarifications.

~~**§ 71.70. What Constitutes a Loaded Firearm.**~~

~~For purposes of this Chapter, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.~~

CLRC COMMENT: Recommend deletion of this section. Section 71.30 provides the central prohibition against bringing or possessing a firearm in a school zone and does not distinguish between "loaded" or "unloaded" firearms. Also, with the recommended changes to § 71.50, this § 71.70 is not necessary.

§ ~~71.80~~ 71.70. Notice.

~~(a)~~ The Department of Education and other entities covered by this Chapter shall post permanent signs with large visible lettering stating at a minimum, "Warning this is a Gun-Free Zone'' at the main entrances of the covered facilities within their control ~~on or before January 1, 2005~~. This Section does not require that notice be posted regarding the proscribed conduct for the purposes of prosecution of any violation of this Act.

~~(b) The Guam Police Department within sixty (60) days of the effective date of this Act shall implement a public relations campaign to inform the general public of its provisions.~~

CLRC COMMENT: Recommend deletion of (b) as it is outdated.

§ ~~71.81~~ 71.80. Chapter Not Applicable ~~to Peace Officers and Military~~.

(a) This Chapter does not apply to a duly appointed peace officer as defined in 8 GCA § 5.55, ~~Article 2, Chapter 5, Title 8, Guam Code Annotated,~~ a full-time paid peace officer of another state or the Federal government who is carrying out official duties while in Guam, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of Guam or of the United States who is engaged in the performance of his or her duties, or an armored vehicle guard engaged in the performance of his or her duties.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

~~**§ 71.82. Not Applicable to Security Guards.**~~

(b) This Chapter does not apply to an on-duty security guard authorized to carry a loaded firearm, provided the security guard is an employee of an entity contracted by the school for security purposes.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

~~**§ 71.83. Not Applicable to Existing Shooting Ranges.**~~

(c) This Chapter does not apply to an existing shooting range at a public or private school or university or college campus.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

§ 71.90. Severability.

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

CLRC COMMENT: No Change

CHAPTER 86

COMPENSATION FOR DAMAGES FROM CRIMINAL ACTIVITIES

~~**NOTE:** This Chapter was added by P.L. 20-155:2 (Mar. 21, 1990); amended and moved by P.L. 27-138:4 (Dec. 30, 2004) to Chapter 161, Title 8, Guam Code Annotated.~~

CLRC COMMENT: This chapter was moved to 8 GCA Chapter 186, however, its title and the note memorializing its removal have remained in the GCA since 2004. This chapter was referred to the Compiler of Laws for removal from the GCA.

CHAPTER 87

VICTIM NOTIFICATION

~~**NOTE:** This Chapter was enacted by P.L. 20-155:1 (Mar. 21, 1990) as Chapter 85. Since Chapter 85 was occupied, renumbered and codified by Compiler as Chapter 87. Repealed in its entirety by P.L. 27-138:3 (Dec. 30, 2004).~~

CLRC COMMENT: This Chapter 87 was repealed in its entirety by P.L. 27-138:3 (2004), which enacted 8 GCA Chapter 160 (Crime Victim's Rights Act of 2004). Victim notification is covered in that Chapter 160. This chapter was referred to the Compiler of Laws for removal from the GCA.

CHAPTER 90

CORRECTIONS

ARTICLE 1

DEPARTMENT OF CORRECTIONS

§ 90.10. Definitions.

As used in this Chapter:

(a) Director means the Director of Corrections.

(b) Department means the Department of Corrections.

(c) Detainee means a person temporarily committed to the custody of the Director, including but not limited to commitment due to pretrial status, federal hold, probation violation, or parole violation.

(d) Inmate means a person committed to the custody of the Director post-adjudication, after imposition of a sentence to a term of imprisonment.

(e) Prisoner means a person committed to the custody of the Director as a detainee or inmate.

CLRC COMMENT: Recommend renumbering all sections in this Title to comport with the reset of the GCA. Recommend adding new definitions (c), (d), and (e).

~~§ 90.15. General Duties of Department of Corrections.~~ Mission Statement.

~~The Department shall protect the public from the destructive action of law offenders through control and rehabilitation. It shall provide staff services for the judiciary, the Parole Board, probation officers and interested agencies of the Executive Branch.~~

To promote public safety through custody and control of criminal offenders while providing a safe and humane environment for their treatment, rehabilitation, and reintegration back into the community as productive citizens.

CLRC COMMENT: Recommend replacing General Duties of Department of Corrections with a Mission Statement.

§ 90.16. Minimum Qualifications for Department of Corrections Officers.

(a) Notwithstanding other provisions of law to the contrary, persons appointed as Corrections Officer *shall*~~:~~ meet the qualifications for employment as a peace officer as defined by the Peace Officer Standards and Training Commission in 17 GCA § 51104 and applicable rules and regulations.

~~(1) be a resident of Guam and a U.S. citizen;~~

~~(2) be of good health and good moral character;~~

~~(3) be over the age of eighteen (18) years;~~

~~(4) be a high school graduate *or* equivalent, but the POST Commission may set higher academic qualifications for all applicants as the Commission considers necessary;~~

~~(5) submit to and pass a drug screening test, including, but *not* limited to, a urinalysis test;~~

~~(6) submit to psychological testing; and~~

~~(7) submit to a polygraph examination.~~

~~(b) No person shall be appointed as a Corrections Officer who has *not* established satisfactory evidence of qualifications by passing a physical examination, which *shall* include a physical agility test, and written examinations based upon standards relevant to the duties to be performed, which standards *shall* be established by the Director of Corrections in conjunction with the Department of Administration.~~

~~(c) No person shall be appointed as a Corrections Officer who has been convicted in any civilian or military court of a felony, a crime involving moral turpitude, a crime of domestic or family violence, or who has been administratively pardoned of any crime.~~

~~(d) No person shall be appointed as a Corrections Officer before a thorough investigation of the applicant's background and moral character is completed.~~

~~(e)~~ (b) A Corrections Officer dismissed for cause *shall* be permanently ineligible for appointment reappointment, or reemployment to any position in the Department. A Corrections Officer who resigns for the sole purpose of negating or averting a pending or anticipated disciplinary action to dismiss the Corrections Officer *shall* be ineligible for reappointment or reemployment.

~~(f) No person shall be appointed as a Corrections Officer who has *not* established satisfactory evidence of the ability to understand and work with persons with disabilities, including special needs and mental illness. Evidence of such ability *shall* be by a certificate of completion of the appropriate training as approved by the Department of Integrated Services for Individuals with Disabilities, as a condition for selection prior to appointment as a Corrections Officer. For the purpose of this Section, the term disability(ies), as is defined in the *Americans with Disabilities Act*, *shall* mean a physical or mental impairment that substantially limits one (1) or more major life activities of an individual. Incumbent uniformed officers who *do not* have a certificate of completion of the training as required in this Act *shall*, within six (6) months following the enactment of this Act, submit to the Department of Administration such certification as required herein.~~

CLRC COMMENT: Recommend amendments with deference to Peace Officer Standards and Training (POST) laws and regulations.

§ 90.16.1. Annual Corrections Officer Recruits Training Cycle.

~~(a)~~ The Department of Corrections shall conduct a corrections officer recruits training cycle for at least twenty (20) candidates per fiscal year, subject to the availability of funds.

~~(b) Each year, the Director of the Department of Corrections shall determine the total cost to conduct a recruitment and training cycle pursuant to the requirements set forth in Subsection (a) of this Section and he/she shall transmit this as part of the Department's proposed budget to *I Maga'hagan Guahan* for inclusion in the Executive Budget request that *I Maga'hagan Guahan* submits annually to *I Liheslaturan Guahan*.~~

~~(c) The Director of the Department of Corrections shall submit a report to *I Maga'hagan Guahan* and the Speaker of *I Liheslaturan Guahan* no later than June 30 of each year to present an update on the corrections officer recruits training cycle conducted during that fiscal year pursuant to the requirements set forth in this Section.~~

CLRC COMMENT: According to the DOCO Subcommission and DOC representatives, subsection (b) is superfluous because the request is already included in the annual appropriations request; for subsection (c), repeal was suggested because lack of funding/appropriations meant that DOC was unable to conduct training cycles on an annual basis.

~~§ 90.20. Corrections Advisory Council Established.~~

~~There is hereby the established Corrections Advisory Council, composed of the Chairman of the Guam Parole Board, the Chief Judge of the Superior Court, the Administrator of Social Services (Director, Public Health and Social Services) or his designee, the Principal of the Vocational & Technical High School or his representative, the United States Attorney or his representative and, in addition, one (1) representative from the business community and one (1) member of the general public, who shall be appointed by the Governor with the advice and consent of the Legislature. The Director of the Department shall be ex officio secretary of the Council and the Department shall furnish necessary logistic support. The Council shall advice the Director and the Department as to the policies and procedures to carry out the intent and purposes of this Chapter.~~

CLRC COMMENT: Recommend deletion of this section. According to DOC, this Council has never met.

§ 90.25. General Powers and Duties of Director ~~to Establish Prisons~~.

(a) The Director shall establish and operate correctional institutions, and other places of confinement, for inmates and detainees ~~for prisoners serving sentences of imprisonment imposed by the Courts of Guam and other authorized prisoners, and other persons placed in the custody of the Director, pursuant to the laws of Guam.~~

(b) As head of the Department, the Director shall administer the Department, and:

(1) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law.

(2) May establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and discretion of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.

(3) May delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.

(4) Shall, when the need arises to use correctional facilities to serve as overflow lock-up, keep inmates and detainees separate and apart.

(c) The Director shall have the authority to promulgate, adopt, and amend rules and regulations in accordance with the Administrative Adjudication Law (codified at Chapter 9 of Title 5, Guam Code Annotated) necessary to implement this Chapter and for the administration of the Department.

(d) The Director of the Department of Corrections must make reasonable efforts:

(1) to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.

(2) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is not a threat to the infant's and the public's safety and welfare.

CLRC COMMENT: This section consolidates §§ 90.25, 90.27, 90.30, 90.35 and 90.40 with amendments.

§ 90.26. Correctional Medical Clincs.

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 a 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 set forth in a 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 the 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 1, 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: New provision added.

~~**§ 90.27. Prison May Serve as Overflow Lock-Up.**~~

~~In the event that a court of competent jurisdiction finds that a facility used to detain persons charged with a crime is inadequate, the court may direct the Director to hold such persons in his custody. Such person shall be detained in an area separate and apart from those persons who have been convicted of a crime and are serving sentences of imprisonment.~~

CLRC COMMENT: Moved to § 90.25(b)(4) with amendments.

~~**§ 90.30. Rules, Regulations & Disciplinary Rules Authorized.**~~

~~The Director subject to the approval of the Governor by Executive Order, is authorized to make rules and regulations for the administration of correctional institutions and other places of confinement, including, but not limited to, necessary disciplinary measures for inmates thereof and for their treatment, care, labor, rehabilitation and reformation.~~

CLRC COMMENT: Moved to § 90.25(c) with amendments.

~~**§ 90.35. Director to Control Organization of DOC; Appoint Staff.**~~

~~(a) The Director may establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and discretion of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.~~

~~(b) The Director may appoint and rename officers and other employees within the Department in accordance with the provisions of Title 4 of the Guam Code Annotated.~~

~~(c) The Director may delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.~~

CLRC COMMENT: Moved to § 90.25 (b)(2) and (3) with amendments.

~~**§ 90.40. General Duties of Director of Corrections.**~~

~~As head of the Department, the Director:~~

~~(a) Shall administer the Department.~~

~~(b) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law.~~

~~(c) May formulate and adopt rules necessary or proper for the internal administration of the Department, subject to the approval of the Governor.~~

CLRC COMMENT: Moved to 90.25(b)(1) with amendments.

§ 90.41. ~~Inmate~~ Commissary.

~~Notwithstanding any other provision of law, the~~ The Department ~~of Corrections (DOC)~~ is authorized to operate or outsource the operation of ~~an inmate~~ a commissary within the confines of DOC. This Section *shall* exempt DOC from the provisions of 21 GCA § 60112 in order to provide DOC the authority to lease property to an approved vendor to operate the commissary facility without first seeking legislative approval.

CLRC COMMENT: Non-substantive amendments.

§ 90.42. Operation of ~~Inmate~~ Commissary.

(a) The Director ~~of DOC~~ may operate, or contract with another person or entity to operate, a commissary for the use of the inmates and detainees confined at DOC.

(b) The Director may enter into a contract for the lease of space to accommodate the commissary. ~~In accordance with 5 GCA Chapter 5 (Guam Procurement Law), the Department of Corrections is authorized to enter into a contract for the lease of up to three hundred (300) square feet of its property for an inmate commissary. Procurement of said contract *shall* be done by a DOC staff member who is qualified under 5 GCA § 5141.~~

~~(c) Funds directed as a result of revenue received from the contract under Subsection (b) of this Section *shall* be subject to an annual audit by the Office of Public Accountability.~~

~~(d) When entering into a contract under Subsection (a) of this Section, the Director or the Director's designee *shall* consider the following:~~

~~(1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;~~

~~(2) the menu items offered by the provider and the price of those items;~~

~~(3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;~~

~~(4) safety and security procedures to be performed by the provider; and~~

~~(5) the performance record of the provider, including service availability, reliability, and efficiency.~~

~~(e) The Department of Corrections *shall* establish policy and procedures for the administration of this Section. Such policy and procedures *shall* be transmitted to *I Liheslaturan Guåhan* prior to operation of the inmate commissary.~~

~~(f) The Department of Corrections *shall* establish rules and regulations for the administration of this Section prior to operation~~ of the inmate commissary.

~~§ 90.43. Corrections Commissary Fund.~~

(c) Corrections Commissary Fund. There is hereby established a Fund to be known as the Corrections Commissary Fund (CCF), which *shall* be maintained separate and apart from other funds of the government of Guam. All funds collected by the government of Guam from the operations of a commissary *shall* be deposited in the CCF; and, interest and investment earnings *shall* be credited to the assets of the CCF and *shall* become part of the CCF~~. Any remaining balance in the CCF at the end of the fiscal year *shall* be carried over to the next fiscal year.~~

(d) ~~Inmate Improvement.~~ The Director may use ~~up to fifty percent (50%) of~~ the net proceeds of the CCF for inmate and detainee improvement. ~~to develop or enhance inmate welfare; and the other fifty percent (50%) *shall* be used for rehabilitation programs within the Department of Corrections.~~

CLRC COMMENT: Sections 90.42 and 90.43 consolidated with amendments.

§ 90.44. ~~Inmate~~ Phone Access Act of 2021.

(a) There is hereby created, within the Department of Corrections, a revolving fund called the "Inmate Phone Access Fund" (Fund), which shall be established by the Department of Administration in accordance with the following provisions:

(1) Notwithstanding any other provision of law, any revenue that is collected by the Government of Guam for telephone services within the Guam Department of Corrections shall be deposited into said Fund.

(2) Any revenue that is deposited into said Fund is to be used to provide no-cost telephonic services for indigent inmates or indigent detainees to contact their legal counsel.

(3) Should revenues deposited into this Fund not be adequate to provide no-cost telephonic services for indigent inmates to contact their legal counsel, the Director of the Department of Corrections and *I Maga'hågan Guåhan* shall ensure that any indigent inmate or indigent detainee be provided with their constitutional right to consult legal counsel through no-cost telephonic service by any means that the Director or *I Maga'hågan Guåhan* sees fit.

(4) For the purposes of this Section, "indigent inmates" or "indigent detainees" shall mean those persons charged in a criminal case before the courts of Guam who are determined indigent consistent with 12 GCA § 11104.

~~(b) Notwithstanding any other provision of law, within thirty (30) days of the enactment of this Section, the Director of the Department of Corrections shall create and implement a policy where indigent inmates shall be allowed to call the Public Defender Service Corporation, the Alternate Public Defender, or their Attorney of Record, at no cost to the indigent inmate. The Director of the Department of Corrections shall submit a report to *I Liheslatura* upon the creation and implementation of said policy.~~

CLRC COMMENT: According to DOC, subsection (b) should be repealed as there is already a policy in place.

§ 90.45. Authorization to Transfer ~~Prisoners~~ Inmates to Federal Correctional Institutions.

The Director is authorized to enter into one or more contracts with the Attorney General of the United States pursuant to the authority granted to the Attorney General of the United States by Title 18, United States Code, § 5003, for the custody, care, subsistence, education, treatment and training in one or more Federal correctional institutions, of persons convicted of criminal offenses in the courts of Guam; provided, that any such contract shall provide for the reimbursement of the United States in full for all costs or other expenses incurred by the United States for such custody, care, subsistence, education, treatment and training; and provided further, that the Director shall comply with the relevant provisions of §§ 90.46 through 90.48 inclusive of this Code prior to the physical transfer of any such person to a Federal correctional institution.

CLRC COMMENT: Non-substantive amendments.

§ 90.46. Emergency Transfers of Inmates.

(a) Existence of correctional emergency. The Director may declare a correctional emergency under the following circumstances:

(1) When the Director determines the existence of conditions which have affected, or in the immediate future will affect, the physical integrity of any correctional institution over which he has jurisdiction or the health or safety of the inmates thereof; and

(2) The effect of such conditions will, in the Director's opinion, be to render such institution unable to provide secure custody and proper care for the inmates thereof. The term 'conditions' as used hereinabove includes, although it is not limited to fire, earthquake, explosion, typhoon, flood, other acts of God and calamitous events and diseases, but it shall not include riot, insurrection or any other disturbance created by the inmates of such institution.

(b) Procedure for Declaration. Whenever the Director determines the existence of a correctional emergency as defined hereinabove, he shall make and execute a short, plain written statement setting forth the nature of such emergency and the basis for his opinion that such emergency will render such institution unable to provide secure custody and proper care for the inmates thereof. Such statement shall be filed in the permanent records of the Department as soon after its execution as is practicable. Copies of such statement shall be delivered to the Parole Board and to the Office of the Attorney General within five (5) calendar days after its execution by the Director.

(c) Transfer of Inmates. Following the declaration of a correctional emergency as provided for hereinabove, the Director may, without further delay, enter into one or more contracts such as those contemplated by §§ 90.45 of this Code or by Article III of the Western Interstate Corrections Compact (§ 90.52 of this Code), and he may thereafter transfer an inmate or inmates of the correctional institution for which such correctional emergency was declared to another correctional institution without any further administrative proceedings; provided, however, that any transfer of an inmate or inmates under conditions of correctional emergency shall be to a correctional institution within Guam, if such then exists and then has the capability of providing secure custody and proper care to such inmate or inmates, and that no inmate shall be transferred to a correctional institution outside of Guam under conditions of correctional emergency unless no correctional institution then existing within Guam then has the capability of providing secure custody and proper care to such inmate.

(d) Termination of Correctional Emergency. Whenever the Director determines that the conditions which necessitated the declaration of a correctional emergency no longer have the effect of rendering the correctional institution unable to provide secure custody and proper care for the inmates thereof, the Director shall declare the termination of such correctional emergency. Such declaration shall be in writing and executed by the Director and shall be filed and delivered as set forth in Subsection (b) of this Section. Such termination shall be effective immediately upon its execution.

(e) Return of Inmates. Upon the termination of a correctional emergency, all inmates who were transferred under the provisions of Subsection (c) of this Section shall immediately be returned to the correctional institution from which they were transferred, at the Department's expense.

CLRC COMMENT: No Change.

§ 90.47. ~~Inmate Transfer:~~ Non-Emergency <u>Transfers of Inmates.</u>

The Director ~~of Corrections~~ is authorized to transfer an inmate to a correctional institution outside of Guam in non-emergency circumstances.

CLRC COMMENT: Non-substantive amendments.

§ 90.47.01. ~~Same:~~ Disciplinary Transfer<u>s of Inmates</u>.

The Director may recommend the transfer of an inmate to an institution outside of Guam for disciplinary reasons in the following circumstances:

(a) when an inmate is alleged by an officer, employee or other inmate to have committed a violation of such institution's rules or regulations, which violation might constitute a threat to the order or discipline of the institution or to the ~~physical~~ safety of an officer, employee or any inmate; or <u>harm to the public; or</u>

(b) when an inmate is subsequently convicted of a violation of § 58.20 or § 58.30 of this Code~~, or of any violent crime.~~

CLRC COMMENT: Non-substantive amendments.

§ 90.47.02. ~~Same:~~ Non-disciplinary Transfers of Inmates.

The Director may recommend the transfer of an inmate to an institution outside of Guam for non-disciplinary circumstances under either of the following circumstances:

(a) whenever the Director determines that, due to the physical or mental condition of an inmate, the present incarceration lacks adequate facilities for custody, care, subsistence, education, treatment or training of the inmate, and that of the inmate would be better served by transfer to an institution outside of Guam; or

(b) whenever the Director determines that due to overcrowding which impacts on the adequacy of the facility to provide for the safe custody, care, subsistence, education, treatment and training of an inmate the interest of the inmate is better served by such transfer to an institution outside Guam.

CLRC COMMENT: Non-substantive amendments.

§ 90.47.03. ~~Same:~~ Procedures for Transfers of Inmates.

Whenever the Director ~~of the Department of Corrections~~ determines that an inmate be recommended for transfer to a correctional institute outside of Guam, the Director shall ~~convene a Transfer Review Committee to~~ review the basis for such recommended transfer. The Director shall ~~promulgate~~ provide ~~through Executive Order rules and regulations for the establishment of a Transfer Review Committee to include:~~

~~(a) a minimum of five (5) members to include a DOC case worker, the Attorney General or representative, a correctional officer, an inmate, a member of the clergy;~~

~~(b) provisions~~ for due notice on a recommended transfer, which shall include timely notice to the inmate and the Attorney General; and

~~(c) provisions~~ for hearing, final decision and appeal from a final decision of transfer~~;~~ .

~~(d) provisions for maintaining~~ The Director shall maintain a record of each hearing.

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

~~**§ 90.47.04. Same: Basis of Determination.**~~

~~(a) The Transfer Review Committee shall base its determination for transfer upon substantial evidence as presented on the record at hearing, and shall be final. No inmate shall be recommended for transfer while any conviction for which he was incarcerated is on appeal. Any statement made by an inmate during the course of a transfer hearing shall not be admitted in evidence against the inmate in any subsequent criminal action, except for the purpose of impeachment or in a trial for perjury, false swearing or contempt.~~

~~(b) The Administrative Adjudication Law and the Open Government Law shall not apply to any proceeding or action taken under this Section, nor shall any inmate be represented by counsel in any proceeding held pursuant to this Section.~~

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

~~**§ 90.47.05.Same: Appeal from Determination.**~~

~~Any inmate whom the Transfer Review Committee has determined is to be transferred under these provisions may appeal such determination to the Superior Court of Guam. The review of the Superior Court shall not be de novo, and shall be limited to a review of the record to determine whether the Transfer Review Committee made its determination based upon a fair and full hearing. A determination may be reversed only upon a showing that the Committee abused its discretion in applying the rules and regulations to the facts which provided the basis for the recommended transfer, and that to allow the decision to stand would result in a miscarriage of justice. Notice of filing an appeal in accordance with this Subsection does not automatically stay an inmates transfer pending appeal.~~

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

~~**§ 90.48. Nursing Mothers Accommodations.**~~

~~(a) The Director of the Department of Corrections must make reasonable efforts to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.~~

~~(b) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is *not* a threat to the infant's and the public's safety and welfare.~~

CLRC COMMENT: Consolidated into § 90.25 (d).

[NEW] § 90.48. Transfers Pursuant to Treaty.

When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, *I Maga'lahen Guåhan* (the Governor of Guam) or the Director of the Department of Corrections, if designated by *I Maga'lahi* (the Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. *I Maga'lahen Guåhan* (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.

CLRC COMMENT: Formerly 90.100, the only section in Article 5. Moved and consolidated under Article 1.

§ 90.49. Corrections Revolving Fund.

There is hereby created, within the Department of Corrections, a revolving fund called the 'Corrections Revolving Fund', which shall be established by the Department of Administration in accordance with the following provisions:

(a) All funds collected from the U.S. Marshal Service, the U.S. Immigration Service and the U.S. Bureau of Prisons for housing U.S. ~~prisoners~~ inmates and detainees, confinement of military personnel as agreed to in a Memorandum of Agreement between the United States Air Force and the Department of Corrections dated March 5, 2003, employees of the Department of Corrections for meals they purchase at the Department's dining facility, and the sale of hot garbage (pig slop) to private persons, shall be deposited into said Fund.

(1) Funds in the Corrections Revolving Fund may be used to purchase clothing for ~~prisoners~~ inmates and detainees, foodstuffs for the dining facility, galley catering services and, equipment, medical/dental supplies, reading glasses, prescription and over-the-counter medicines, sanitary/ hygiene supplies, and other pharmaceutical supplies for ~~prisoners~~ inmates and detainees, including payment for ~~prisoners~~ inmates and detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs and for ~~DepCor~~ Department of Correction Reservists.

(2) Expenditures from the Fund shall be approved by the Director ~~of Corrections~~ and posted on the Department's website.

(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund shall be maintained by the Director of Administration.

(4) Such accounting shall include and clearly identify the sources and amounts of all funds paid into or withdrawn from said Fund.

(b) The Corrections Revolving Fund shall be maintained separate and apart from all other funds of the government of Guam.

~~(c) *No* expenditures and encumbrances from the Corrections Revolving Fund shall be made without legislative approval through appropriation.~~

CLRC COMMENT: DOC requested repeal of subsection (c) because the requirement of legislative approval and appropriation made it administratively difficult to access the funds for DOC and inmate needs. There are already protections in place for expenditure and reporting/accounting of expenditure of the funds.

ARTICLE 2

WESTERN INTERSTATE CORRECTIONS COMPACT

§ 90.50. Purpose of Article.

The purpose of this Article is to enact enabling legislation for the enactment of the Western Interstate Corrections Compact, hereinafter referred to as the Compact. This Article may be cited as the Western Interstate Corrections Compact Enabling Act.

CLRC COMMENT: No change.

§ 90.51. Compliance to §§ 90.46-90.48.

No person shall be transferred to a correctional institution outside of Guam unless the applicable provisions of §§ 90.46 [Emergency Transfers of Inmates], or 90.47 [Non-emergency Transfers of Inmates, or 90.48 of this ~~Code~~ Chapter have first been complied with or unless such person has been legally sentenced to a term of imprisonment in such a correctional institution.

CLRC COMMENT: Non-substantive amendments.

§ 90.52. Compact Stated.

The Compact as contained herein is hereby enacted into law and entered into on behalf of Guam with any and all states legally joining therein in a form substantially as follows:

Western Interstate Corrections Compact

Article I
Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently, high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this Compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

Article II
Definitions

As used in this Compact, unless the context clearly requires otherwise:

(a) *State* means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) *Sending State* means a state party to this Compact in which conviction was had.

(c) *Receiving State* means a state party to this Compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) *Inmate* means a male or female offender who is under sentence to, or confined in, a prison or other correctional institution.

(e) *Institution* means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III
Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(3) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(4) Delivery and retaking of inmates.

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract herewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any

sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity, or provision, of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or installments as provided in the contract.

(c) The terms and provisions of this Compact shall be a part of any contract entered into by the authority of, or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV
Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this Compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the Territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the Territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this Compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of the sending state in institutions pursuant to this Com pact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any all proceedings had pursuant to the provisions of this Subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this Subdivision shall be borne by the sending state.

(g) An inmate confined pursuant to this Compact shall be released within the Territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its Territory.

(h) Any inmate confined pursuant to the terms of this Compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this Compact.

Article V

Acts Not Reviewable in Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this Compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this Compact through any and all states party to this Compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this Compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escape.

Article VI
Federal Aid

Any state party to this Compact may accept Federal aid for use in connection with any institution or program, the use of which is or may be affected by this Compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this Compact may participate in any such Federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

Article VII
Entry Into Force

This Compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this Article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington, and to Guam. Thereafter, this Compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this Compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this Article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

Article VIII
Withdrawal and Termination

This Compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the Compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its Territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this Compact.

Article IX
Other Arrangements Unaffected

Nothing contained in this Compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state of the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X
Construction and Severability

The preceding shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this

Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

CLRC COMMENT: No change.

§ 90.54. Director, Department of Corrections May Commit ~~Prisoner~~ Inmate Outside of Guam Pursuant to Terms of Compact.

The Director of Corrections may commit or transfer any inmate of a penal institution under his responsibility to any institution without Guam if Guam has entered into a contract or contracts for the confinement of inmates in such institution pursuant to Article III of the Compact.

CLRC COMMENT: Non-substantive amendments.

§ 90.56. All Agencies of Government of Guam Shall Enforce Compact.

The courts, departments, agencies and officers of Guam shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the Compact.

CLRC COMMENT: No change.

§ 90.58. Director, Department of Corrections May Hold Hearings as Required by Compact.

The Director of Corrections is hereby authorized and directed to hold such hearings as may be requested by any party state pursuant to Article IV(f) of the Compact.

CLRC COMMENT: No change.

§ 90.60. Governor May Contract to Implement Compact.

The Governor is hereby empowered to enter into such contracts as may be appropriate to implement the participation of the territory of Guam in the Compact pursuant to Article III thereof.

CLRC COMMENT: No change.

§ 90.62. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.

Where the inmate of an institution within Guam is committed or transferred to any institution outside Guam pursuant to § 90.54, and if such inmate is discharged in the receiving state by agreement pursuant to Article IV(g) of the Compact, where such inmate is a permanent resident of Guam the return transportation of such inmate to Guam shall be furnished by Guam.

CLRC COMMENT: No change.

§ 90.64. Severability.

The provisions of this Article shall be severable and if any phrase, clause, sentence, or provision of the Article is declared to be invalid or the applicability thereof to any state, agency, person or circumstances is held invalid, the validity of this Article and the applicability thereof to any other state, agency, person or circumstance shall with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this Article be reasonably and liberally construed.

CLRC COMMENT: No change.

§ 90.66. Effective Date.

This Article shall become effective upon the enactment of consent legislation by the United States Congress in accordance with Article VII of the Compact.

CLRC COMMENT: No change.

ARTICLE 3

INTERSTATE COMPACT ON JUVENILES

CLRC COMMENT: Recommendation to move this entire Article 3 to Title 19 Chapter 20 – Department of Youth Affairs.

~~§ 90.80. Purpose of Article: Title.~~

§ 90.82. Governor to Execute Compact: Compact Stated.

§ 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.

§ 90.80. Purpose of Article: Title.

The purpose of this Article is to enact enabling legislation for the Interstate Compact on Juveniles, hereinafter referred to as the Compact. This Article may be cited as the Interstate Compact on Juveniles Enabling Act.

§ 90.82. Governor to Execute Compact: Compact Stated.

The Governor of Guam is hereby authorized to execute and enter into a Compact on behalf of t Guam with any and all states, territories, Trust Territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico legally joined therein in a form substantially as follows:

Article I
Finding and Purposes

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II
Existing Rights and Remedies

That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III
Definitions

That, for the purposes of this Compact:

(a) *delinquent juvenile* means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court;

(b) *Probation or parole* means any kind of conditional release of juveniles authorized under the laws of the states party hereto;

(c) *Court* means any court having jurisdiction over delinquent, neglected or dependent children.

(d) *State* means any state, territory, and Trust Territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(e) *Residence or any variant thereof* means a place at which a home a regular place of abode is maintained.

Article IV
Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate; and shall be accompanied by two (2) certified copies of the document

or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardian ship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made shall hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, after a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent or a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provision of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue and order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who shall appoint counsel or guardian and litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such juvenile over the officer whom the court demanding him shall have appointed to receive him. The judge, however may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who shall appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state; or if he is suspended of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the law of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation cost of such return.

(c) That juvenile as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

Article V
Return of Escapes and Absconders

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by the affidavit, shall be executed in duplicate, and shall be accompanied by two (2) certified copies of judgment, formal adjudication, or order of commitment which

subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. The delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who shall appoint counsel or guardian and litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, such person may be taken into custody in any other state party to his Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, at will enable his detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation cost of such return.

Article VI
Voluntary Return Procedure

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without requisition in another state party to this Compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state to which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return; and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII
Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other

state party to this Compact (herein called 'receiving state') while on probation or parole and the receiving state shall accept such delinquent juvenile if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigation as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in it discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but, if at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII
Responsibility for Costs

(a) That the provisions of Articles IV (b), V (b), and VII (d) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this Compact.

Article IX
Detention Practices

That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lock-up nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X
Supplementary Agreements

That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state

sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to this being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating state.

Article XI
Acceptance of Federal and Other Aids

That any state party to this Compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this Compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII
Compact Administrators

That the Chief Judge of the Superior Court of Guam shall be the Compact Administrator and who, acting jointly with like officers of other states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article XIII
Execution of Compact

That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV
Renunciation

That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six (6) months' notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereto shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six (6) months' renunciation notice of the present Article.

Article XV
Severability

That the provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters.

Article XVI
Out-of-State Confinement

(a) This Article, known as the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, is hereby enacted into law and entered into by this Territory with all other states legally joining therein the form substantially as follows:

(1) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the Territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(2) Escapees and absconders who could otherwise be returned pursuant to Article V of the Compact may be confined or reconfined in the receiving state pursuant to this Article. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such Article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state.

Whenever applicable, detention orders as provided in Article V may be employed pursuant to this Paragraph preliminary to disposition of the escapee or absconder.

(3) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this Article shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

(4) As used in this Article: (1) sending state means sending state as the term is used in Article VII of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the Compact; (2) receiving state means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this Article.

(5) Every state which adopts this Article shall designate at least one of its institutions for delinquent juveniles as a Compact Institution and shall confine persons therein as provided in Paragraph (a) hereof unless the sending and receiving state in question shall make specific contractual arrangement to the contrary. All states party to this Article shall have access to Compact Institutions at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

(6) Persons confined in ACompact Institutions@ pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said ACompact Institution@ for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.

(7) All persons who may be confined in a "ACompact Institution"@ pursuant to the provisions of this Article shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this Article be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(8) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this Compact may enter into supplementary agreements determining a different allocation of costs as among themselves.

(A) Rules and regulations necessary to effectuate the terms of this Article may be promulgated by the appropriate officers of those states which have enacted this Article.

(B) In addition to any institution in which the authorities of this Territory may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to this Article, confine or order the confinement of a delinquent juvenile in a Compact Institution within another party state.

§ 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.

Pursuant to the Compact the Presiding Judge of the Superior Court shall be the Compact Administrator and shall promulgate rules and regulations to carry out the terms of the Compact. The Compact Administrator may enter into agreements with appropriate officials of other states or territories pursuant to the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of Guam in facilitating the proper administration of the Compact or of any agreements entered into by Guam thereunder.

ARTICLE 4

PRISON INDUSTRIES

§ 90.90. Prison Industries, ~~Established.~~

~~(a) Prison Industries, Established~~. The Department ~~of Corrections~~ is hereby authorized to establish such prison industries as may be feasible to provide a means for inmates and detainees to receive job training and skills development; to provide opportunities for the earning of wages to be used to pay restitution to victims of crime, and payment of fines and court costs; and to provide additional means for funding certain recurring expenses of the Department. The Department *shall* separate and designate each prison industry to be established as occurring "within the secured perimeter" or occurring "outside the secured perimeter." This Act is *not* meant to replace the activities authorized by Chapter 84 of Article 1, Title 9, Guam Code Annotated, but *shall* be viewed as authorizing additional activities. This Chapter *shall not* supersede, *nor* affect any programs undertaken pursuant to Chapter 81 of this Title.

~~(b) Role of Corrections Advisory Council. The Corrections Advisory Council *shall* advise the Department on the suitability of any industry to be established, and may assist the Department in other matters relative to the establishment, operation, and maintenance of a chosen industry.~~

~~(c) Earnings Formula, established. Inmates shall be paid at no less than local prevailing wage rates as determined by the Director of Labor. Each inmate participating in a prison industry shall have all wages earned subject to this Earnings Formula:~~

~~(1) Twenty-five percent (25%) to the Criminal Injuries Compensation Fund.~~

~~(2) Twenty-five percent (25%) to payment of court-ordered fines, fees, and restitution. When such court-ordered fines, fees, and restitution have been satisfied, this percentage shall be applied to the Inmate's Account.~~

~~(3) Twenty-five percent (25%) to the Prison Industries Revolving Fund.~~

~~(4) Twenty-five percent (25%) to the Inmate's Account. Each participating inmate may elect to provide up to one hundred percent (100%) of the twenty-five percent (25%) for child and spousal support.~~

~~(5) In the event that the participating inmate does not owe any sum listed above, one hundred percent (100%) of earned wages shall be placed in the Inmate's Account.~~

~~(d) Eligibility to Participate. The Department *shall* establish criteria for determining an inmate's eligibility for participation in an established prison industry. All inmates shall be eligible for participation in an established prison industry consistent with eligibility requirements for other in-house prison rehabilitation programs unless otherwise ordered by a Court.~~

~~(e) In-kind Contributions and/or Credit for Services Allowed. The Department is authorized to enter into agreements with other government of Guam entities to receive in-kind contributions and/or a credit for services rendered in lieu of cash payments.~~

~~(f) Authority to Bid Granted. Notwithstanding the provisions of § 84.10(c) of Chapter 84, Article 1 of Title 9, Guam Code Annotated, the Department may submit its bid for the provision of services to a non-government entity, provided, that it includes as a component of its bid the costs for housing, utilities, food, supplies and any other item that would normally be considered as part of the overhead costs.~~

CLRC COMMENT: See comment to § 90.20, recommended for repeal above. This Council has never met.

§ 90.91. Prison Industries Revolving Fund.

(a) There is hereby created, within the Department ~~of~~ Corrections, a revolving fund called the "Prison Industries Revolving Fund" (Fund), which *shall* be established by the Department of Administration ~~in accordance with the following provisions:~~ .

~~(b) All funds collected from § 90.90(c) *shall* be deposited into said Fund.~~

~~(1) Funds in the Prison Industries Revolving Fund may be used to purchase clothing for prisoners and detainees, foodstuffs for the dining facility, galley catering services and equipment, medical/dental supplies, prescription and over-the-counter medicines, sanitary/hygiene supplies and other pharmaceutical supplies for prisoners and detainees, including, payment for prisoner-detainee maintenance costs in any off-island prison or medical institutions, payment~~

~~for overtime and related personnel costs for personnel specifically assigned to tasks involving Prison Industries, and for training of Department of Corrections personnel.~~

~~(2) Expenditures from the Fund *shall* be approved by the Director of Corrections and posted on the Department's website.~~

~~(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund *shall* be maintained by the Director of Administration.~~

~~(4) Such accounting *shall* include and clearly identify the sources and amounts of all funds paid into *or* withdrawn from said Fund.~~

~~(c) The Prison Industries Revolving Fund *shall* be maintained separate and apart from all other funds of the government of Guam.~~

~~(d) The Fund *shall* be subject to an annual audit, and its findings *shall* be posted on the department's website.~~

CLRC COMMENT: Use of the Prison Industries Revolving Fund should be addressed by departmental rule.

~~**ARTICLE 5**~~
~~**TRANSFER PURSUANT TO TREATY**~~

~~**§ 90.100. [Untitled Section].**~~

~~When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, *I Maga'lahen Guåhan* (the Governor of Guam) or the Director of the Department of Corrections, if designated by *I Maga'lahi* (the Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. *I Maga'lahen Guåhan* (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.~~

CLRC COMMENT: Moved to Article 1 of this Chapter and renumbered to ~~§ 90.26~~ § 90.48.

ARTICLE 6

CIVILIAN CORRECTIONS RESERVE PROGRAM

§ 90.201. Creation

(a) There is hereby created within the Department of Corrections (DOC) the Civilian Corrections Reserve Program (CCRP), which *shall* be headed by the Director of DOC (Director).

(b) The Director, subject to the advice and control of the Governor, *shall* be responsible for carrying out the purposes of this Article, and shall have such additional duties and responsibilities as are authorized herein, or as may be prescribed by the Governor.

CLRC COMMENT: No change.

§ 90.202. Functions and Duties.

(a) The general functions and duties of the CCRP *shall* be to provide backup manpower to protect the public from the destructive actions of law offenders through control and rehabilitation. It *may* provide staff services to the Judiciary, the Parole Board, probation officers, and interested agencies of the Executive Branch.

(b) The Director *shall* formulate a program whereby the CCRP *shall* adhere to the functions and duties herein prescribed. From time to time, the Director shall review and revise the functions and duties of the CCRP to ensure an amicable discharge of responsibilities and duties acknowledging the fact that their roles are an extension of the duties of the regular personnel.

CLRC COMMENT: No change.

§ 90.203. Recruitment.

(a) The Director *shall* recruit, on an entirely volunteer basis, local residents who desire to make available their services to assist the Department of Corrections in carrying out the function of protecting the public from the destructive actions of law offenders through control and rehabilitation.

(b) The Director *shall* further promulgate rules and regulations for recruitment regarding the age, health, and other requirements.

(c) Nothing in this Section shall prohibit the Director from recruiting a resident who is a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

CLRC COMMENT: No change.

§ 90.204. Training, Equipping, and Maintenance of Records.

(a) Training for the CCRP members *shall* be conducted pursuant to the provisions of the Peace Officer Standards and Training (POST) Commission in 17 GCA Chapter 51. Initial training requirements *shall* be identical to those required of DOC cadets.

(b) The Director *shall* maintain a roster of reservists who have received the training prescribed by 17 GCA Chapter 51. In order to maintain membership in the CCRP, each member must keep up with his scheduled training, and no reservist may remain in the CCRP if he or she is unable to keep up with or otherwise absorb the training. Additionally, basic supplies and equipment *shall* be provided to ensure a constant operability of the CCRP, including a continuing program for replacement.

(c) Any member of the CCRP who has *not* met the minimum qualifications/certifications for firearms safety and proficiency, physical fitness, recruitment clearances, and background checks *shall not* be allowed to serve in the CCRP.

CLRC COMMENT: No change.

§ 90.205. Reservist: Authority.

Whenever members of the CCRP are rendering assistance to DOC, such volunteers *shall* have the same powers, duties, rights (including coverage under the Worker's Compensation Act), privileges and immunities, as if they were paid, full-time members of the Department of Corrections, except that they *shall* earn recruitment credit for services performed as volunteers.

CLRC COMMENT: No change.

§ 90.206. Same: Allowance.

Each member of the CCRP who successfully completes probationary requirements as established by the Director, and who serves a minimum of twenty (20) hours to maintain good standing as a CCRP officer, and forty-two (42) hours per month, *shall* receive an allowance of Five Hundred Dollars ($500) per month to defray the cost of maintenance of their equipment and uniforms. The Department of Corrections *shall* identify funds within their department appropriations to satisfy the intent of this Section.

CLRC COMMENT: No change.

§ 90.207. Authorization for Full-Time CCRP Officers.

(a) The Department of Corrections (DOC) may employ a CCRP officer on a temporary, full-time basis, if such officer is an active member and has attained at least two thousand eighty (2,080) cumulative service hours when a critical need arises due to military activation of DOC officers or absence due to long-term disability status that has been certified by a medical doctor. DOC may exercise this authority provided its authorized budget for personnel is *not* exceeded. The CCRP officer *shall* return to reservist status pursuant to this Article when the incumbent returns from military service or long-term disability or at the discretion of the Director.

(b) When employed by DOC, a CCRP officer may only serve as an equivalent of Corrections Officer I and be compensated as a Corrections Officer I, Step I. Said CCRP officer *shall* be eligible to receive sick leave, be eligible for the Government of Guam Health Insurance Program, and *shall not* be eligible for a stipend as a Reserve officer for the duration of their temporary employment with DOC.

(c) A CCRP reservist *shall* be offered permanent employment in the event a permanent position becomes available at DOC; provided, that the reservist meets all of the qualifications as prescribed in this Article. The Director *shall* promulgate rules and regulations that determine the order in which reservists are selected for permanent service.

(d) Notwithstanding 10 GCA § 77114(a)(1), a CCRP officer who serves as a Corrections Officer I, Step I under this Section may be a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

CLRC COMMENT: No change.

§ 90.208. Same: Eligibility and Oath.

(a) No person shall be a volunteer member of the CCRP established under this Article who advocates a change by force or violence in the constitutional form of the Government of the United States or of Guam, or the overthrow of any government in the United States by force, or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(b) Every volunteer *shall*, entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in Guam, which oath *shall* be substantially as follows:

> "I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the laws of Guam, against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter and I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the Government of the United States or of Guam by force or violence; and that during such time as I am a member of the Civilian Corrections Reserve Program I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or Guam by force or violence."

CLRC COMMENT: No change.

§ 90.209. Rules and Regulations: Recommendations.

The Director is authorized and empowered to recommend to the Governor for issuance as executive orders the making, amendment, and rescission of such orders, rules and regulations as may be necessary to carry out the provisions of this Article.

CLRC COMMENT: No change.

ARTICLE 7

THE DEPARTMENT OF CORRECTIONS MODERNIZATION ACT OF 2021

§ 90.301. Legislative Findings and Policy.

(a) *I Liheslaturan Guåhan* finds that the Department of Corrections (DOC) was established by Public Law 9-208 on July 18, 1968 within the executive branch of the Government of Guam. Before the enactment of Public Law 9-208, the Department of Corrections was first known as the Guam Penitentiary and through Executive Order 68-23, issued by Governor Manuel F.L Guerrero, the Penitentiary was transferred to the Department of Corrections, which was effective on November 1, 1968.

(b) The Department of Corrections is the only prison on Guam and provides services to local and federal agencies. DOC provides custodial care to individuals who are convicted of crimes and for those who are waiting judicial disposition. The environment of the prison must meet federal standards such as the National Prison Standards, Prison Rape Elimination Act (PREA), and the National Commission on Correctional Healthcare Standards (NCCHC), which ensures that the living conditions are decent and humane; but, with the issue of overcrowding and structural failures, DOC has been struggling to properly execute their mandates and comply with national standards. DOC is ensuring that it prevents any violations of the Federal Consent Decree, which requires the Government of Guam to improve the living conditions of the inmates following the Civil Rights of Institutionalized Persons Act.

(c) The Adult Correctional Facility (ACF) in Mangilao is in its stages of failure due to age and lack of modern technology, which is affecting the operations and personnel of the correctional agency. The ACF was built to hold a maximum of three hundred (300) inmates and detainees; and currently, the population of Guam is growing as well as its crime rates, while DOC has outgrown its ACF. Over time, other DOC buildings were added to address the overcrowding issues of the ACF, and buildings used for rehabilitation and offices were re-designed to accommodate the rising population of prisoners. The Adult Correctional Facility is made of fifteen (15) housing units, which holds not only local inmates and detainees, but also immigration and federal detainees. The lack of proper facilities prevents DOC from properly providing rehabilitation to the inmates.

(d) The poor condition of the housing units of the prison is not cost effective or adequate to handle the growing prisoner population, and DOC recognized the difficulty in meeting its mandates of providing security, health, rehabilitation and

welfare to the inmates and detainees under its care without compromising the well-being of its personnel. The main goal of the Department of Corrections is to provide rehabilitation to individuals who have been convicted of crimes and ensure that they become useful members of the community and to themselves.

(e) Furthermore, *I Liheslaturan Guåhan* finds that DOC has plans to build a new Department of Corrections facility with a bed capacity for one thousand (1,000) inmates to replace its current prison if funding was available. The new prison would provide the proper space to meet its mandates and the demands of its growing prisoner population. The Department of Corrections had started to draft an eighty (80)-year master plan, which will provide a phase-to-phase plan to construct a new Department of Corrections facility that will meet its construction goal of a bed capacity of one thousand (1,000) inmates. The Department of Corrections' goal is to ensure that all the issues on structural, technology, and security of the inmates and personnel are covered. The master plan also ensures that DOC meets all federal standards such as the National Prison Standards and PREA standards.

(f) Therefore, it is the intent of *I Liheslaturan Guåhan* to provide the Department of Corrections with the proper confinement of offenders in a controlled environment prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, which also promotes the safety of the people of Guam. I Liheslaturan Guåhan has identified funding to construct a new Department of Corrections Adult Correctional Facility through the Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million Dollars ($60,000,000) annually, of which an estimate of no more than Five Million Dollars ($5,000,000) will be allocated for the payments of the lease-back agreement.

(g) In an effort to overcome financing hurdles, and to provide DOC with the proper tools to meet its mandates, *I Liheslaturan Guåhan* desires to authorize the Government of Guam to enter into contract for the financing, design, construction, and long-term capital maintenance of a new Department of Corrections facility with private sector contractors who can provide long-term financing.

(h) To facilitate the financing, design, construction, and maintenance of a new Department of Corrections facility envisioned by this Act, the Government of Guam will be authorized to execute a lease agreement of existing property under its inventory for up to thirty (30) years on which the new Department of Corrections facility will be constructed.

(i) The lease of the Government of Guam's property will be to the contractor and/or the Guam Economic Development Authority, who will design and construct the new Department of Corrections facility and provide a funding for the design and construction through appropriations received from the reimbursement of the Earned Income Tax Credit for Fiscal Year 2022 and prospective appropriations from the General Fund, thereafter annually. Upon completion of the construction, the facilities and land will be leased back to the Government of Guam for a period not to exceed the initial ground lease to the contractor over which time the Government of Guam will amortize, as lease payments to the contractor, the cost of financing, design, construction, and related expenses of the new Department of Corrections.

(j) The contractor/developer will also be responsible for the capital maintenance and repair of the Department of Corrections constructed under this Act, which costs shall be paid by the Government of Guam as provided for under this Act. At the expiration of the lease-back period, the Government of Guam real property and the Department of Corrections constructed on the Government of Guam real property will revert to the Government of Guam with no further obligations to the contractor.

CLRC COMMENT: No change.

§ 90.302. Definitions.

For the purposes of this Article and unless otherwise specified, the following words and phrases are defined to mean:

(a) *Act* means Article 7 of Title 9, Chapter 90, Guam Code Annotated, which shall be known as "The Department of Corrections Modernization Act of 2021."

(b) *Contract* shall mean the design, construction, and financing contract entered by and between the Government of Guam and the contractor following negotiations on the response to the Request for Proposal.

(c) *Contractor/developer* shall mean the authorized entity which shall be the signatory on the contract and shall be fully responsible for carrying out the finance, design, construction, and maintenance of the new Department of Corrections. The contractor/developer may cooperate with another entity or entities in any manner the contractor/developer deems appropriate to provide for the financing, design, and construction of the new Department of Corrections envisioned by this Chapter.

(d) The *Department of Corrections Construction Committee* shall be chaired by the Administrator or Deputy Administrator of the Guam Economic Development Authority, and include the Director and Deputy Director of the

Department of Corrections, the Director or Deputy Director of the Department of Public Works, the Director or Deputy Director of the Department of Land Management, the Director or Deputy Director of the Bureau of Statistics and Planning, the Director or Deputy Director of the Bureau of Budget and Management Research, and the Director or Deputy Director of the Department of Administration.

(e) *Correctional agency* shall mean the Department of Corrections.

(f) *Correctional facility* shall mean the Department of Corrections Adult Correctional Facility.

(g) *Lease* shall mean a lease from the Government of Guam itself or through the Department of Corrections to the contractor/developer entered at the time of the contract for the property.

(h) *Lease-back* shall mean the lease from the Guam Economic Development Authority and/or the contractor/developer to the Government of Guam itself or by and through the Department of Corrections of the newly constructed Department of Corrections.

(i) *Property* shall mean any property on which a new Department of Corrections is located.

CLRC COMMENT: No change.

§ 90.303. Authorization to Enter into Long-Term Leases.

(a) For the purpose of facilitating the financing, design, construction, and maintenance of the new Department of Corrections encompassed by this Act, the Government of Guam is authorized to lease property that will be used for the new Department of Corrections, as required, to the contractor/developer and/or the Guam Economic Development Authority; provided, such property is in the inventory of the Government of Guam.

(b) The Government of Guam is also authorized to lease-back from the contractor/developer and/or the Guam Economic Development Authority the property for a period mutually agreed upon between the Government of Guam and the contractor/developer and/or the Guam Economic Development Authority as may be reasonably necessary to amortize the lease-back period of no more than thirty (30) years the cost associated with the design, construction, and maintenance of the new Department of Corrections. In no event shall the end of such lease-back period be structured as an annually renewable lease with a provision for automatic renewals to the extent that pledged revenue under § 90.308 is available. The lease-back shall not be construed as a debt under any applicable debt limitation under the Organic Act of Guam or Guam law.

CLRC COMMENT: No change.

§ 90.304. Identification Projects and Procurement.

(a) The Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall utilize the program study of the correctional agency to identify and prioritize potential projects to be completed.

(1) The list of projects identified by the Program Study of the correctional agency shall be included in one (1) Request for Proposal developed by the Guam Economic Development Authority.

(A) Upon receipt of the Program Study, the Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall solicit Request for Proposals (RFP) for a contractor/developer, in compliance with the Guam Procurement Law, for the financing, design, and construction of the Department of Corrections, according to the needs of the correctional agency and consistent with this Article.

(B) GEDA is also hereby authorized to solicit the services for a Program Management Office, which shall include, but not be limited to, creating scopes of work, coordinating projects and performance targets, conducting periodic quality control reviews, assuring timely product generation and response, and managing the project to produce a quality product within the budget and schedule.

(2) The choice of the contractor/developer shall be made by the Department of Corrections Construction Committee. The committee shall assess the prior performance of the contractor/developer on similar projects, and shall be free to disqualify any contractor/developer that does not have a successful record of project completion on Guam or any similar isolated locality.

(b) The Committee shall also specifically consider the contractor/developer's ability and performance with regards to the financing, development and construction of a correctional facility on Guam or any similar isolated locality.

(c) The selection of a contractor/developer shall be based upon the proposal that delivers the lowest cost value for Guam in meeting the objectives of the correctional agency.

(d) GEDA shall issue an RFP within thirty (30) days after the conclusion of its Program Study, in consultation with the Department of Corrections for the design, construction, and maintenance of the correctional facilities.

CLRC COMMENT: No change.

§ 90.305. Responsibility of Contractor/Developer.

The contract shall require that the contractor/developer be responsible for all costs, expenses, and fees of any kind or nature, associated with the design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of the Department of Corrections to the extent provided by GEDA in consultation with the Department of Corrections in the Request for Proposal. The lease may, for the purposes herein, provide that its term shall be extended for a period not to exceed the shorter of ten (10) years beyond the original term of the lease-back, or such period of time as is necessary to repay in full any financing arranged pursuant to § 90.309 of this Article.

CLRC COMMENT: No change.

§ 90.306. Contractual Safeguards.

Prior to undertaking the work of finance, design, construction, and maintenance of the new Department of Corrections, the Guam Economic Development Authority, in consultation with the Department of Corrections and the contractor/developer, shall negotiate and enter into a binding construction contract to build the new Department of Corrections in accordance with Guam Building Code under 21 GCA Chapter 67, Guam Fire Safety Codes and any other applicable requirements. The construction contract shall contain contractual obligations typically found in Government of Guam construction contracts, including, but not limited to:

(a) warranties;

(b) liquidated damages;

(c) performance and payments bonds;

(d) indemnity;

(e) insurance;

(f) standard specifications;

(g) technical specifications;

(h) progress schedule;

(i) maintenance;

(j) compliance with Guam labor regulations;

(k) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;

(l) compliance with Public Law 28-98: restriction against contractors employing convicted sex offenders to work at Government of Guam venues; and

(m) the 2017 Guam Tropical Energy Code.

The contract must be approved as to form and legality by the Attorney General of Guam.

CLRC COMMENT: No change.

§ 90.307. Assignments.

To facilitate the purpose of this Act and provide security for the holders of any financing instruments issued pursuant to this Act, the contractor/developer may assign, without the need of the consent of the Guam Economic Development Authority, the contract, the lease and the lease-back to any underwriter, trustee, or other party as appropriate to facilitate the contractor/developer financing.

CLRC COMMENT: No change.

§ 90.308. Pledge or Reservation of Revenues.

(a) Rental payments under the lease and the lease-back may be secured by a pledge or other reservation of revenues collected by the Government of Guam from the following:

(1) The sum of no more than Five Million Dollars ($5,000,000) from the revenues received pursuant to 11 GCA Chapter 42, Earned Income Tax Credit will be available for Fiscal Year 2022 only.

(2) The sum of no more than Five Million Dollars ($5,000,000) from the General Fund shall be appropriated annually thereafter.

(3) The Governor of Guam may use federal funds that are made available to the Government of Guam by the United States Federal Government for the financing, design, construction, and maintenance of the new Department of Corrections facility.

(4) The use of other financing options is authorized for the purpose of this Act, including, but not limited to, loans, grants, bond financing, and other alternate funding options, subject to legislative approval.

(b) Any amounts reserved or pledged as provided in this Section shall be subject to annual appropriations for the purpose of making lease-back payments. The revenues pledged or reserved and thereafter received by the Government of Guam or by any trustee, depository, or custodian shall be deposited in a separate account and shall be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further action, and such reservation or the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need be recorded.

CLRC COMMENT: No change.

§ 90.309. Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.

(a) To minimize the financing cost to the Government of Guam, financing utilized by the contractor/developer to fund the design, construction, and maintenance of the Department of Corrections shall be through tax-exempt obligations, taxable bond obligation, or other financial instruments; provided, such financing is available at interest rates determined by the Guam Economic Development Authority to be reasonable and competitive. The Guam Economic Development Authority shall be the issuer of any financial instruments or obligations unless the Guam Economic Development Authority waives its right to serve as the issuer of financial instruments or obligations. Alternatively, the contractor may use an alternative method of financing, including, but not limited to, a short-term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States of America if such financing will better serve the needs of the people of Guam. Such alternative financing shall be approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure that the Government of Guam pays the lowest possible interest rate so that the cost of the Government of Guam's financing of the design and construction of the Department of Corrections, amortized through the lease-back payments from the Government of Guam to GEDA and or the contractor/developer, will be lower than regular commercial rates.

(b) *I Liheslaturan Guahan*, pursuant to § 50103(k) of Chapter 50, Title 12, Guam Code Annotated, hereby authorizes the Guam Economic Development Authority to issue one or more additional series of tax-exempt and/or taxable obligations (in any case, the "bonds") for the purpose of financing the Department of Corrections Adult Correctional Facility, in an aggregate principal amount not to exceed Eighty Million Dollars ($80,000,000) for the following purposes:

(1) to finance the design, construction, and/or the maintenance of the Department of Corrections Adult Correctional Facility;

(2) to fund a deposit to a debt service reserve fund;

(3) to fund capitalized interest with respect to the bonds; and

(4) to pay expenses relating to the authorization, sale, and issuance of the bonds, including without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks, or other financial institutions providing credit enhancement fees, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale, and delivery of the bonds, subject to the following additional conditions:

(A) The terms and conditions of the bonds shall be as determined by the Guam Economic Development Authority by the execution of a certificate, trust agreement or indenture authorizing the issuance of the bonds; provided, however, that such terms and conditions shall be consistent with this Section, that the bonds shall have a final maturity not to exceed thirty (30) years; and an interest rate not to exceed seven percent (7%).

(B) No bonds authorized by this Section shall be sold until the Board of Directors of Guam Economic Development Authority has approved the sale by resolution, as provided in Chapter 50 of Title 12, Guam Code Annotated.

(C) The issuance of bonds pursuant to this Section shall not be subject to the approval of the voters of Guam.

CLRC COMMENT: No change.

§ 90.310. Prison IT, Building, and Security Management System.

(a) For the purpose of ensuring the long-serving duration of the Department of Corrections facility, GEDA may include in the specifications for the new correctional facility, the requirement for a prison information management system, a security and surveillance system, and a building management system. These systems identified must be done in consultation with the Department of Corrections and comply with the federal mandates related to prison records and to foster compliance with the Federal Standards for Prisons and Jails.

(b) GEDA, in consultation with the Department of Corrections, may determine the specifications for such systems based on comprehensive, state-of-the-art technology generally accepted within the United States Prison Industry in connection with the development for a new Department of Corrections facility. The specifications shall require that all systems are designed by the same software developer so as to ensure the delivery of the rehabilitation to the inmates.

(c) In order to ensure immediate response to system downtimes or failure, GEDA may include in the specifications the requirement that the provider of these systems have a local Guam Office and service technicians stationed on Guam.

CLRC COMMENT: No change.

§ 90.311. Utilities and Routine Maintenance and Repair.

The contractor/developer shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone, and cable and all maintenance and repair and exterior groundskeeping and landscaping and upkeep of the Department of Corrections.

CLRC COMMENT: No change.

§ 90.312. Maintenance Fund.

The contract with the contractor/developer, and the lease-back shall provide that all capital maintenance and repair of the Department of Corrections facility be performed by the contractor/developer. The contractor/developer shall provide sufficient funding for a separate maintenance fund for this purpose; sufficient funds for this purpose shall be defined as the cost of capital maintenance and repair for the remaining period of the lease agreement with the Government of Guam after the completion of the Department of Corrections. The maintenance fund shall be used exclusively for the purpose of capital maintenance and repair and shall be in an interest-bearing account segregated from other funds held in escrow.

CLRC COMMENT: No change.

§ 90.313. Rules and Regulations.

The Guam Economic Development Authority, in consultation with the Department of Corrections, may promulgate rules and regulations pursuant to the Administrative Adjudication Law as necessary to implement the provisions of this Article.

CLRC COMMENT: No change.

§ 90.314. Financial Plan Required.

GEDA shall prepare a financial plan in accordance with the following:

(a) At a minimum, the financial plan shall include a comprehensive report of the associated costs and sources of revenues required for the duration of the Department of Corrections Modernization Act of 2021 (Project). The financial plan should reflect the total Project cost and any phases that represent the Project development priorities. All anticipated Project revenues shall be matched and allocable to the anticipated Project costs and shall detail its impact on the overall debt ceiling.

(b) The financial plan shall be submitted to *I Maga'hågan Guåhan* and transmitted to the Speaker of *I Liheslaturan Guåhan.* No solicitation of Request For Proposal or invitation for bid authorized to effectuate the requirements of this Act may be issued until the financial plan is delivered to the Speaker of *I Liheslaturan Guåhan.*

CLRC COMMENT: No change.

CHAPTER 91

INFANT CHILD'S RIGHT TO LIFE ACT

CLRC COMMENT: No change.

§ 91.01. Title.

This Act may be known and cited as the "Infant Child's Right to Life Act."

CLRC COMMENT: No change.

§ 91.02. Legislative Findings and Purpose.

(a) *I Liheslaturan Guåhan* finds that:

(1) All children, no matter their age, have the right to life. Guam has a paramount interest in protecting all human life.

(2) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of Guam.

(3) Guam must assert its interest in protecting an infant whose live birth occurred as the result of an abortion.

(4) Without proper legal protection, newly-born infants who survive abortions could be denied proper life-saving or life-sustaining medical treatment and left to die.

(b) Accordingly, it is the purpose of this Act to ensure the protection and promotion of the health and wellbeing of all infants born alive in Guam. Therefore, this Act mandates that healthcare providers give medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born alive infants.

CLRC COMMENT: No change.

§ 91.03. Definitions.

For the purposes of this Act only:

(a) Abortion means the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(b) Born alive or live birth means the complete expulsion or extraction of an infant from his or her mother, regardless of the state of gestational development, that, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including, but not limited to, one or more of the following:

(1) breathing;

(2) a heartbeat;

(3) umbilical cord pulsation; or

(4) definite movement of voluntary muscles.

(c) Consent means knowledge of and explicit or implicit agreement to or instruction to perform a violation of this Act.

(d) Facility or medical facility means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(e) Infant, for the purposes of this Act, and as used in this Act, means a child of the species *homo sapiens* that has been completely expulsed or extracted from its mother, regardless of the stage of gestational development, until the age of thirty (30) days post birth. An infant is also a human being for purposes of Chapter 16 of Title 9, Guam Code Annotated.

(f) Premature or preterm means occurring prior to the thirty-seventh (37th) week of gestation.

CLRC COMMENT: No change.

§ 91.04. Requirements and Responsibilities.

(a) A person shall not deny or deprive an infant of nourishment with the intent to cause or allow the death of the infant for any reason.

(b) A person shall not deprive an infant of medically appropriate and reasonable medical care and treatment or surgical care.

(c) The requirements of this Section shall not be construed to prevent an infant's parent(s) or guardian(s) from refusing to give consent to medical treatment or surgical care which is not medically necessary or reasonable, including care or treatment which either:

(1) is not necessary to save the life of the infant;

(2) has a potential risk to the infant's life or health that outweighs the potential benefit to the infant of the treatment or care; or

(3) is treatment that will do no more than prolong the act of dying when death is imminent.

(d) The physician performing an abortion must take all medically appropriate and reasonable steps to preserve the life and health of an infant. If an abortion performed in a hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant, inform the mother of the live birth, and request the transfer of the infant to a resident, on-duty or emergency care physician, who shall provide medically-appropriate and reasonable medical care and treatment to the infant. If an abortion performed in a facility other than a hospital results in a live birth, a physician attending the abortion shall provide immediate medical care and treatment to the infant and call 9-1-1 for an emergency transfer of the infant to a hospital that shall provide medically-appropriate and reasonable care and treatment to the infant.

(e) If the physician described in Subsection (d) of this Section is unable to perform the duties in that Subsection because he is assisting the woman on whom the abortion was performed, then an attending physician's assistant, nurse, or other licensed healthcare provider must assume the duties outlined in that Subsection.

(f) Any infant, including one born in the course of an abortion procedure, shall be treated as a legal person under the laws of Guam, with the same rights to medically-appropriate care and treatment, and birth and death (if death occurs) certificates shall be issued accordingly.

(g) If, before the abortion, the mother and the father have stated in writing that they do not wish to keep the infant in the event that the abortion results in a live birth, and this writing is not retracted before the abortion, the infant, if born alive, shall immediately upon birth become a ward of Guam.

(h) No person may use any infant for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of the premature born alive infant.

CLRC COMMENT: No change.

§ 91.05. Criminal Penalties.

(a) Any physician, nurse, or other licensed healthcare provider who intentionally with premeditation, or intentionally, or knowingly, or recklessly, or by criminal negligence fails to provide reasonable and medically-appropriate and reasonable care and treatment to an infant in the course of an abortion shall be guilty of a criminal homicide, as defined in Chapter 16 of Title 9, Guam Code Annotated, and may be punished in accordance with that Chapter. The mother will not be liable, criminally or civilly, for actions of a physician, nurse, or other licensed healthcare provider, in violation of this Act to which she did not give her consent.

(b) Any violation of § 91.04(h) of this Act concerning the research use of a born-alive infant is a felony of the first degree, and upon conviction may be punished in accordance with Article 2, Chapter 80 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 91.06. Civil and Administrative Action.

In addition to whatever remedies are available under the common or statutory laws of Guam, failure to comply with the requirements of this Act shall:

(a) provide a basis for a civil action for compensatory and punitive damages. Any conviction under this Act shall be admissible in a civil suit as *prima facie* evidence of a failure to provide medically appropriate and reasonable care and treatment to a born-alive infant. Any civil action may be based on a claim that the death of or injury to the born-

alive infant was a result of simple negligence, gross negligence, wantonness, willfulness, intentional conduct, or another violation of the legal standard of care;

(b) provide a basis for professional disciplinary action for the suspension or revocation of any license of physicians, licensed and registered nurses, or other licensed or regulated persons. Any conviction of any person for any failure to comply with the requirements of this Act shall result in the automatic suspension of his or her license for a period of at least one year, and shall be reinstated after that time only under such conditions as shall be required to ensure compliance with this Act; and

(c) provide a basis for recovery for the parent(s) of the infant, or the parent(s) or guardian(s) of the mother if the mother is a minor, for the wrongful death of the infant whether or not the infant was viable at the time abortion was performed.

CLRC COMMENT: No change.

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§ 60109. Concealed Firearms.

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.

CLRC COMMENT: 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).

§ 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.

CLRC COMMENT: Amendments to alleviate issues with military members registering firearms brought into Guam. Grace period is consistent with the grace period in § 60110.1.

§ 60110.1. Firearms.

A grace period for payment of fees due for renewal of registration or for new registration for a firearm for a 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.

CLRC COMMENT: Amendments for consistency with changes recommended for § 60110.

ATTACHMENT 3

APPROVED RECOMMENDATIONS

CHAPTER 1
PRELIMINARY PROVISIONS: DEFINITIONS

ARTICLE 1
PRELIMINARY PROVISIONS; CONSTRUCTION

§ 1.10. Short Title.

This ~~Code~~ Title 9 of the Guam Code Annotated shall be known as the Guam Criminal ~~and Correctional~~ Code.

CLRC COMMENT: Non-substantive clarification and for consistency with the first section of Title 8 GCA.

~~**§ 1.12. Severability.**~~

~~If any provisions of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.~~

CLRC COMMENT: Repeal and reenact as a new § 1.12 (Rules of Construction) with severability included as subsection (g).

§ 1.12. Rules of Construction.

Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.

(a) Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.

(b) Whenever any reference is made to any portion of this Code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

(c) The present tense includes the past and future tenses; and the future, the present.

(d) The masculine gender includes the feminine and neuter.

(e) The singular number includes the plural; and the plural, the singular.

(f) Shall is mandatory and may is permissive.

(g) If any provisions of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

CLRC COMMENT: Reenacted § 1.12 consolidating the other rules of construction sections of this chapter: § 1.12 (Severability), § 1.34 (Rules of Construction), § 1.36 (Headings), § 1.38 (Amendments Included), § 1.42 (Tenses), § 1.44 (Gender), § 1.46 (Number), § 1.48 (Shall and May).

§ 1.14. ~~Purpose for Defining Offenses~~ Purposes, Principles of Construction.

(a) The general purposes of the provisions governing the definition of offense are:

(1) to forbid, prevent, and condemn conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;

(2) to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentence authorized, the rehabilitation of those convicted, and their confinement when required in the interest of public protection;

(3) to subject to public control persons whose conduct indicates that they are disposed to commit offenses;

(4) to give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;

(5) to differentiate on reasonable grounds between serious and minor offenses; and

(6) to define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault.

(b) The general purposes of the provisions governing the sentencing of offenders are:

(1) to prevent and condemn the commission of offenses;

(2) to promote the correction and rehabilitation of offenders;

(3) to assure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protections;

(4) to safeguard offenders against excessive, disproportionate, or arbitrary punishment;

(5) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;

(6) to differentiate among offenders with a view to a just individualization in their treatment; ~~and~~

(7) to advance the use of generally accepted scientific methods and knowledge in sentencing offenders~~.~~ ;

(8) to promote restitution to victims;

(9) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and

(10) to impose sentences no more severe than necessary to achieve the societal purposes for which they are authorized.

(c) The provisions of this Code shall be construed according to the fair import of their terms, but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by this Code shall be exercised in accordance with the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.

CLRC COMMENT: Non-substantive clarification of title from source MPC § 1.02. Added subsection (b)(8) is from New Jersey and promotes restitution to victims. Added subsection (b)(9) is from the United States Code and promotes educational, vocational and medical care of inmates. Added subsection (b)(10) safeguards against disproportionate punishment.

§ 1.16. Territorial Applicability.

(a) Except as otherwise provided in this Section, a person may be convicted under the law of ~~this Territory~~ Guam of an offense committed by his own conduct or the conduct of another for which he is legally accountable if;

(1) he conduct which is an element of the offense or the result which is such an element occurs within ~~this Territory~~ Guam;

(2) conduct occurring outside the Territory is sufficient under the law of ~~this Territory~~ Guam to constitute an attempt to commit an offense within ~~the Territory~~ Guam;

(3) conduct occurring outside ~~the Territory~~ Guam is sufficient under the law of ~~this Territory~~ Guam to constitute a conspiracy to commit or offense within ~~the Territory~~ Guam and an overt act in furtherance of such conspiracy occurs within ~~the Territory~~ Guam;

(4) conduct occurring within ~~the Territory~~ Guam establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which is also an offense under the law of ~~this Territory~~ Guam.

(5) the offense consists of the omission to perform a legal duty imposed by the law of ~~this Territory~~ Guam with respect to domicile, residence, or a relationship to a person, thing, or transaction in ~~the Territory~~ Guam; or

(6) the offense is based on a statute of ~~this Territory~~ Guam which expressly prohibits conduct outside ~~the Territory~~ Guam when the conduct bears a reasonable relation to a legitimate interest of ~~this Territory~~ Guam and the person knows or should know that his conduct is likely to affect that interest.

(b) ~~Paragraph (1) of~~ Subsection (a)(1) does not apply when either causing a specified result or an intent to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(c) ~~Paragraph (1) of~~ Subsection (a)(1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside ~~the Territory~~ Guam which would not constitute an offense if the result had occurred there, unless the person intentionally or knowingly caused the result within ~~the Territory~~ Guam.

(d) When the offense is homicide, either death of the victim or the bodily impact causing death constitutes a "result," within the meaning of ~~Paragraph (1) of S~~ subsection (a)(1) and if the body of a homicide victim is found within ~~the Territory~~ Guam, it is presumed that such result occurred within ~~the Territory~~ Guam.

(e) ~~the Territory~~ Guam includes the land and water and the air space above such land and water with respect to which ~~the Territory~~ Guam has legislative jurisdiction.

(f) Notwithstanding that territorial jurisdiction may be found under this Section, the court may dismiss, hold in abeyance for up to six months, or with the permission of the defendant, place on an inactive list a criminal prosecution under the law of this Territory where it appears that such action is in the interests of justice because the defendant is being or is likely to be prosecuted for an offense based on the same conduct in another jurisdiction and ~~the Territory~~ Guam's interest will be adequately served by a prosecution in the other jurisdiction.

CLRC COMMENT: Amendments for consistency with 1 GCA § 420. Other amendments are for clarification of citations.

§ 1.18. Classes of Crimes.

(a) An offense defined by this Code or by any other statute of ~~this Territory~~ Guam, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors or petty misdemeanors.

(b) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which, apart from an extended term, is in excess of one year.

(c) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto.

(d) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(e) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto or if it is defined by a statute other than this Code which now provides that person convicted thereof may be sentenced to imprisonment for a maximum term of less than one year.

(f) An offense defined by this Code or by any other statute of ~~this Territory~~ Guam constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(g) An offense defined by any statute of ~~this Territory~~ Guam other than this Code shall be classified as provided in this Section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

CLRC COMMENT: Amendments for consistency with 1 GCA § 420.

§ 1.19. Felonies Defined and Classified.

(a) Felonies defined by this Code are classified, for the purpose of sentence, into three degrees, as follows:

(1) felonies of the first degree;

(2) felonies of the second degree;

(3) felonies of the third degree.

Any crime declared to be a felony, without specification of degree, is of the third degree.

(b) Notwithstanding any other provision of law, a felony defined by any statute of Guam other than this Code shall constitute for the purpose of sentence a felony of the third degree.

CLRC COMMENT: Amendments for consistency with 1 GCA § 420.

§ 1.20. Relationship of Code to Other Laws; Contempts, Penalties and Remedies.

(a) No conduct constitutes an offense unless it is a crime or violation under this Code or other statute of Guam.

(b) The provisions of this Code shall apply to offenses defined by other statutes, unless otherwise expressly provided or unless the context otherwise requires.

(c) Nothing in this Code shall affect the power of a court to punish contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(d) Nothing in this Code shall bar or suspend any liability for damages, penalty, forfeiture, or other remedy otherwise authorized by law to be recovered or enforced in any civil action or proceeding, for any conduct punishable by this Code.

CLRC COMMENT: Amendment for consistency with 1 GCA § 420.

§ 1.22. Prosecution for Conduct Which Constitutes More Than One Offense.

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other as defined in 8 GCA § 105.58 ~~of the Criminal Procedure Code~~;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other,

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

CLRC COMMENT: Non-substantive citation clarification.

§ 1.24. Double Jeopardy. Same Offense.

A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(b) The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this Subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of fact. Termination under any of the following circumstances is not improper:

(1) the defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination;

(2) the trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed; or

(3) the trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity.

CLRC COMMENT: Non-substantive typographical correction.

§ 1.26. Double Jeopardy. Different Offense.

A prosecution of a defendant for a violation of a different provision of the statutes or based on different facts than a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is for:

(1) any offense of which the defendant could have been convicted on the first prosecution;

(2) any offense of which the defendant should have been tried on the first prosecution under ~~Subsection (b) of § 65.30 of the Criminal Procedure Code~~ 8 GCA § 65.30(b) unless the court ordered a separate trial of the charge of such offense; or

(3) the same conduct, unless (A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil, or (B) the second offense was not consummated when the former trial began.

(b) The former prosecution was terminated, after the complaint was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(c) The former prosecution was improperly terminated, as improper termination is defined in § 1.24, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

CLRC COMMENT: Non-substantive citation clarification.

§ 1.28. Concurrent Jurisdiction. When a Bar to Prosecution.

When conduct constitutes an offense within the concurrent jurisdiction of Guam and of the United States or any state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in Guam under the following circumstances:

(a) the first prosecution resulted in an acquittal or in a conviction as defined in § 1.24 and the subsequent prosecution is based on the same conduct, unless

(1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or

(2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or

(3) the second offense was not consummated when the former trial began; or

(b) the former prosecution was terminated after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

CLRC COMMENT: No change.

§ 1.30. Former Prosecutions. When Not a Bar to Present Prosecution.

A prosecution is not a bar within the meaning of §§ 1.24, 1.26 and 1.28 under ~~either~~ any of the following circumstances:

(a) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense tried in that court; or

(b) The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a petition for post-conviction relief or similar process, except that any bar as to reprosecution for a greater inclusive offense created by ~~Subsection (a) of~~ § 1.24(a) shall apply.

(c) The former prosecution resulted in a plea of guilty or nolo contendere which was held invalid in an appeal under 8 GCA § 130.15(e) and the defendant may be retried as if the former plea had not been entered.

CLRC COMMENT: Non-substantive grammatical correction and citation clarification.

§ 1.32. [Reserved.]

[Reserved.]

CLRC COMMENT: No change.

~~**§ 1.34. Rules of Construction.**~~

~~Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~**§ 1.36. Headings.**~~

~~Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~**§ 1.38. Amendments Included.**~~

~~Whenever any reference is made to any portion of this Code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

§ 1.40. [Reserved.]

[Reserved.]

CLRC COMMENT: No change.

~~**§ 1.42. Tenses.**~~

~~The present tense includes the past and future tenses; and the future, the present.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~**§ 1.44. Gender.**~~

~~The masculine gender includes the feminine and neuter.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12

~~**§ 1.46. Number.**~~

~~The singular number includes the plural; and the plural, the singular.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

~~**§ 1.48. Shall and May.**~~

~~Shall is mandatory and may is permissive.~~

CLRC COMMENT: Repeal and reenact into consolidated revised §1.12.

§ 1.50. Military Authority.

This Code does not affect any authority otherwise conferred by law upon any court-martial or other military authority or officer to prosecute and punish persons violating such codes or laws.

CLRC COMMENT: No Change.

ARTICLE 2
DEFINITIONS

§ 1.60. General Definitions Applicable to Entire Title.

Unless otherwise expressly stated:

~~(a) Chapter means a chapter of this Title.~~

~~(b) Article means an article of the chapter in which that term occurs.~~

~~(c) Section means a section of this Code.~~

~~(d) Subsection means a subsection of the section in which that term occurs.~~

~~(e) Paragraph means a paragraph of the subsection in which that term occurs.~~

~~(f)~~ Person means any natural person, partnership, firm, association, corporation or other legal entity.

CLRC COMMENT: Repeal unnecessary definitions.

§ 1.70. Peace Officer.

As used in this Code, peace officer has the meaning provided by 8 GCA § 5.55 of the Criminal Procedure Code.

CLRC COMMENT: No Change.

~~**§ 1.80. Territory.**~~

~~As used in this Code, Territory means the territory of Guam.~~

CLRC COMMENT: Amendment for consistency with 1 GCA § 420.

CHAPTER 4

GENERAL PRINCIPLES OF LIABILITY

§ 4.10. Conduct to Include Voluntary Act or Omission.

A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

CLRC COMMENT: No change.

§ 4.15. Voluntary Act Defined.

(a) A *voluntary act* is one performed consciously as a result of effort or determination.

(b) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control of it for sufficient time to have been able to terminate his control.

CLRC COMMENT: No change.

§ 4.20. Liability for Omission Limited.

A person is not guilty of an offense if his liability is based solely on an omission unless the law defining the offense expressly so provides, or a duty to perform the act is otherwise imposed by law.

CLRC COMMENT: No change.

§ 4.25. Culpability.

Except as provided in § 4.45, a person is not guilty of a crime unless he acts intentionally, knowingly, recklessly or with criminal negligence, as the law may require, with respect to the conduct, the result thereof or the attendant circumstances which constitute the material elements of the crime.

CLRC COMMENT: No change.

§ 4.30. Culpability Defined.

(a) A person acts intentionally, or with intent, with respect to his conduct or to a result thereof when it is his conscious purpose to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to his conduct or to attendant circumstances when he is aware of the nature of his conduct or that those circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is practically certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to attendant circumstances or the result of his conduct when he acts in awareness of a substantial risk that the circumstances exist or that his conduct will cause the result and his disregard is unjustifiable and constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to attendant circumstances or the result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or that his conduct will cause the result and his failure to be aware of the risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

CLRC COMMENT: No change.

§ 4.35. Culpability Applied to Elements of Offense.

(a) If the definition of an offense prescribes a culpable mental state but does not specify the conduct, attendant circumstances or result to which it applies, the prescribed culpable mental state shall apply to each such material element.

(b) If the definition of a crime prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(c) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of an offense unless the statue clearly so provides.

CLRC COMMENT: No change.

§ 4.40. Culpable Mental State Generally Required.

Except as provided in § 4.45, if the definition of a crime does not expressly prescribe a culpable mental state, a culpable mental state is nonetheless required and is established only if a person acts intentionally, knowingly or recklessly.

CLRC COMMENT: No change.

§ 4.45. ~~Same~~ Culpable Mental State: When Inapplicable.

The culpable mental state requirements of § 4.25 and § 4.40 do not apply if the offense is a violation or if the law defining the offense clearly indicates purpose to dispense with any culpable mental state requirement.

CLRC COMMENT: Non-substantive amendment to section title.

§ 4.50. Causation Established and Defined.

(a) An element of an offense which requires that the defendant have caused a particular result is established when his conduct is an antecedent but for which the result would not have occurred, and,

(1) if the offense requires that the defendant intentionally or knowingly caused the result, that the actual result, as it occurred,

(A) is within the purpose of contemplation of the defendant, whether the purpose or contemplation extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that designed or contemplated and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(2) if the offense requires that the defendant recklessly or negligently cause the result, that the actual result, as it occurred,

(A) is within the risk of which the defendant was or should have been aware, whether that risk extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that recklessly or negligently risked and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(3) if the offense imposes strict liability, that the actual result, as it occurred, is a ~~probably~~ probable consequence of the defendant's conduct.

(b) A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed, contemplated or risked is that a different person or property was injured or affected or that a less serious or less extensive injury or harm occurred.

CLRC COMMENT: Non-substantive amendment to section

§ 4.55. Guilt Established by Causing or Aiding Innocent Party in Commission of Crime.

A person is guilty of an offense if, acting with the culpability required for the offense, he causes or aids an innocent or non-responsible person to engage in conduct prohibited by the definition of the offense.

CLRC COMMENT: No change.

§ 4.60. Guilt Established by Complicity.

A person is guilty of an offense if, with the intention of promoting or assisting in the commission of the offense, he induces or aids another person to commit the offense. If the definition of the offense includes lesser offenses, the offense of which each person shall be guilty shall be determined according to his own culpable mental state and to those aggravating or mitigating factors which apply to him.

CLRC COMMENT: No change.

§ 4.65. Criminal Facilitation Established and Punished.

A person is guilty of criminal facilitation when, knowing that another person intends to engage in conduct which in fact constitutes a crime, he knowingly furnishes substantial assistance to him.

Criminal facilitation of a felony of the first degree is a felony of the third degree.

Criminal facilitation of a felony of the second or of the third degree is a misdemeanor.

Criminal facilitation of a misdemeanor or petty misdemeanor is a petty misdemeanor.

CLRC COMMENT: No change.

§ 4.70. Criminal Liability for Acts of Another: ~~Non-Availability of~~ Certain Defenses Not Available.

In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is no defense that:

(a) the offense can be committed only by a particular class of persons to which the defendant does not belong; or

(b) the other person has legal immunity from prosecution, or has not been prosecuted for or convicted of an offense based upon the conduct in question, or has previously been acquitted.

CLRC COMMENT: Non-substantive amendment to section title.

§ 4.75. ~~Same~~ Criminal Liability for Acts of Another: Defenses Available.

Unless otherwise provided by law, in any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is a defense that:

(a) the defendant was a victim of the offense; or

(b) under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant withdrew from participation in the offense and made a reasonable effort to stop the commission of the offense.

CLRC COMMENT: Non-substantive amendment to section title.

§ 4.80. Criminal Liability of Corporations.

(a) A corporation may be convicted of:

(1) any offense committed in furtherance of its affairs on the basis of conduct performed, authorized, requested, commanded or recklessly tolerated by (A) the board of directors; (B) a managerial agent acting in the scope of his employment; or (C) any other person for whose conduct the statute defining the offense provides criminal responsibility;

(2) any offense consisting of a failure to perform a duty imposed by law; or

(3) any petty misdemeanor or violation committed by an agent of the corporation acting in the scope of his employment in furtherance of its affairs.

(b) It is no defense that an individual upon whose conduct liability of the corporation is based has not been prosecuted or convicted, has been convicted of a different offense or is immune from prosecution.

(c) As used in this Section, managerial agent means an agent of the corporation having duties of such responsibility that his conduct may fairly be found to represent the policy of the corporation.

CLRC COMMENT: No change.

CHAPTER 16

CRIMINAL HOMICIDE

§ 16.10. Definitions Applicable to Chapter.

As used in this Chapter:

(a) *Human Being* means a person who has been born and is alive;

(b) *Bodily Injury* means physical pain, illness, unconsciousness or any impairment of physical condition;

(c) *Serious Bodily Injury* means bodily injury which creates: serious permanent disfigurement; a substantial risk of death or serious, permanent disfigurement; severe or intense physical pain; or protracted loss or impairment of consciousness or of the function of any bodily member or organ;

(d) *Deadly Weapon* means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to the defendant to be capable of producing death or serious bodily injury.

CLRC COMMENT: No change.

§ 16.20. Criminal Homicide Defined.

(a) A person is guilty of criminal homicide if he causes the death of another human being:

(1) intentionally and with premeditation; or

(2) intentionally; or

(3) knowingly; or

(4) recklessly; or

(5 by criminal negligence.

(b) *Criminal homicide* is aggravated murder, murder, manslaughter or negligent homicide.

CLRC COMMENT: No change.

§ 16.30. Aggravated Murder Defined.

(a) Criminal homicide constitutes aggravated murder when:

(1) it is committed intentionally with premeditation; or

(2) it is committed during the commission or attempt to commit any felony defined in Chapters 22, 25, 31, 34, 37, 40 or 58 of this Title; or

(3) death is directly caused by the illegal use of a Schedule I or Schedule II Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old ~~(Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substances directly causes the death of such minor child, is guilty of aggravated murder. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.)~~; or

(4) Death of a minor child under the age of eighteen (18) is directly caused by a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title by a person who is not licensed to prescribe or dispense the substance; or

~~(4)~~ (5) it is committed upon the orders of another person. Such person giving the order is also guilty of aggravated murder.

(b) Aggravated murder is a felony of the first degree, but a person convicted of aggravated murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, further, that any person convicted of aggravated

murder shall *not* be eligible for parole, work release, educational programs outside the confines of prison nor shall his sentence be suspended.

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 16.40. Murder Defined.

(a) Criminal homicide constitutes murder when:

(1) it is committed intentionally or knowingly; or

(2) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life; or

(3) death is directly caused by the illegal use of a Schedule I or Schedule II Controlled Substance, defined by Chapter 67 of this Title, to any person. ~~Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance directly causes the death of such person, is guilty of murder. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts~~; or

(4) Death of a person who is eighteen (18) years or older is the result of a knowing or willing transfer or sale of any Schedule I or Schedule II Controlled Substance as defined by, and in violation of, Chapter 67 of this Title.

(b) Murder is a felony of the first degree, but a person convicted of murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, however, that any person convicted of murder shall be eligible for parole after serving fifteen (15) years as provided in § 80.72 of this Title and no part of said sentence shall be suspended; provided, further, that any person convicted of murder shall also *not* be eligible for work release or educational programs outside the confines of prison.

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 16.50. Manslaughter Defined and Classified.

(a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse (The reasonableness of such explanation or excuse ~~shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.)~~; or

(3) death is indirectly or proximately caused, such as an accident, by the illegal use of a Schedule I or Schedule II Controlled Substance, as defined by Chapter 67 of this Title, to a person under the influence of such controlled substance; or ~~. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance indirectly or proximately causes the death of such person, is guilty of manslaughter. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.~~

(4) death of a person who is eighteen (18) years or older results from a knowing or willing transfer or sale of a Schedule I or Schedule II controlled substance, where such controlled substance proximately causes the death of such person.

(b) The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.

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

CLRC COMMENT: Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals.

§ 16.60. Negligent Homicide Defined and Classified.

(a) Criminal homicide constitutes negligent homicide when it is committed by criminal negligence.

(b) Negligent homicide is a felony of the third degree.

CLRC COMMENT: No change.

CHAPTER 17
UNBORN VICTIMS OF VIOLENCE ACT

CLRC COMMENT: No change.

§ 17.01. Title.

This Act may be cited or referred to as "The Unborn Victims of Violence Act of 2016."

CLRC COMMENT: No change.

§ 17.02. Legislative Statement and Intent.

(a) *I Liheslaturan Guåhan* understands that the physical harm or death of an expectant woman could equally result in the physical harm and death to the unborn child in her womb. For the woman who desires to carry and care for her unborn child to term, the protection and safety of the living being in her womb is something she should not have to worry about. To this statement, former President George W. Bush once expressed, "Any time an expectant mother is a victim of violence, two lives are in the balance, each deserving protection, and each deserving justice."

(b) *I Liheslaturan Guåhan* finds that "The Unborn Victims of Violence Act of 2016" (Act) is a step toward protecting an expectant mother and her unborn child, and recognizes that an unborn child is a legal victim if he or she is injured or killed during the commission of crimes of violence.

(c) *I Liheslaturan Guåhan* believes and further recognizes that while an expectant mother has a legal right to determine the fate of her unborn child, she should also be assured that any harm to her unborn child caused from unwarranted and unexpected harm directed at her will result in additional criminal sanctions against the responsible person(s).

CLRC COMMENT: No change.

§ 17.03. Definitions.

For the purposes of this Chapter, the following terms are defined to mean:

(a) person shall not include the pregnant woman whose unborn child is harmed;

(b) unborn child shall mean a child in utero, and the term "child in utero" or "child, who is in utero" means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

CLRC COMMENT: No change.

§ 17.04. Application.

(a) This Chapter shall not apply to acts that cause bodily harm to an unborn child if those acts were committed during any legal abortion, in accordance with Guam law.

(b) This Chapter shall not apply to acts that were committed under usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

CLRC COMMENT: No change.

§ 17.05. Murder of an Unborn Child.

(a) A person commits the offense of murder of an unborn child if, in performing acts which cause the death of an unborn child without lawful jurisdiction, the person:

(1) either intended to cause the death of, or cause serious bodily injury to, the pregnant woman or her unborn child, or knew that such acts would cause death or serious bodily injury to the pregnant woman or her unborn child; or

(2) commits such acts recklessly under circumstances manifesting extreme indifference to the value of the life of the pregnant woman or her unborn child.

(b) The penalty for murder of an unborn child shall be the same as the penalty for murder defined in Chapter 16 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 17.06. Manslaughter of an Unborn Child.

(a) A person who kills an unborn child without lawful justification commits manslaughter of an unborn child if, at the time of the killing, the person was acting under a sudden and intense passion resulting from serious provocation by another who the offender endeavors to kill, but the person negligently or accidentally causes the death of the unborn child.

(b) Manslaughter of an unborn child is a felony of the first degree and is punishable to the same extent and manner as the offense of manslaughter defined in Chapter 16 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 17.07. Aggravated Assault of an Unborn Child.

(a) A person commits aggravated assault of an unborn child when, in committing assault against a pregnant woman, he or she causes serious bodily injury to an unborn child.

(b) Aggravated assault of an unborn child is punishable to the same extent and manner as the offense of aggravated assault in the second degree defined in Chapter 19 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 17.08. Assault of an Unborn Child.

(a) A person commits assault of an unborn child if he or she, without legal justification and by any means, commits assault on a pregnant woman as defined in § 19.30 of Chapter 19, Title 9, Guam Code Annotated.

(b) It is not a defense that no injury was caused to the unborn child as a result of the assault.

(c) Assault of an unborn child is punishable to the same extent and manner as the offense of assault defined in Chapter 19 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 17.09. Knowledge Not a Defense.

An offense committed under this Act does not require proof that:

(a) the person committing the offense had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(b) the person committing the offense did not intend to cause the death of, or bodily injury to, the unborn child.

CLRC COMMENT: No change.

§ 17.10. No Prohibition.

The provisions of this Act shall not be construed to prohibit the prosecution of any person under any other provision of law.

CLRC COMMENT: No change.

CHAPTER 19
ASSAULT, RECKLESS ENDANGERING, TERRORIZING

§ 19.10. General Definitions.

As used in this Chapter, the terms bodily injury, serious bodily injury and deadly weapon have the meanings provided by § 16.10.

CLRC COMMENT: No change.

§ 19.20. Aggravated Assault; Defined & Punished.

(a) A person is guilty of aggravated assault if he either recklessly causes or attempts to cause:

(1) serious bodily injury to another in circumstances manifesting extreme indifference to the value of human life;

(2) serious bodily injury to another;

(3) bodily injury to another with a deadly weapon.

(b) Aggravated assault under Paragraph (1) of Subsection (a) is a felony of the second degree; aggravated assault under Paragraphs (2) or (3) or Subsection (a) is a felony of the third degree; provided that any person convicted of aggravated assault shall not be eligible for work release or educational programs outside the confines of prison.

CLRC COMMENT: No change.

§ 19.30. Assault; Defined & Punished.

(a) A person is guilty of assault if he:

(1) either recklessly causes or attempts to cause bodily injury to another;

(2) recklessly uses a deadly weapon in such a manner as to place another in danger of bodily injury; or

(3) by physical menace intentionally puts or attempts to put another in fear of imminent bodily injury.

(b) (1) An assault against a peace officer who is performing his official duties as a peace officer is a felony of the third degree if the perpetrator knew *or* should have known that the victim was a peace officer.

(A) In any assault against a peace officer, the jury *shall*, with any finding of guilty, also return a finding as to whether the perpetrator had actual knowledge that the victim was a peace officer.

(B) *If* the jury finds that the perpetrator had actual knowledge that the victim was a peace officer, the court *shall* impose a minimum sentence of one (1) year in prison without suspension, probation, parole, *or* work release.

(2) For purposes of this § 19.30, *peace officer* means one so defined in § 5.55, Title 8, Guam Code Annotated, and to also include those individuals serving in a volunteer law enforcement capacity within any government of Guam law enforcement entity.

(c) An assault committed by a peace officer on a person in his custody or control, without any provocation whatsoever and with the use of excessive force, is a felony of the third degree.

(d) An assault committed in a fight or scuffle entered into by mutual consent is a petty misdemeanor.

(e) Any other assault is a misdemeanor.

CLRC COMMENT: No change.

§ 19.40. Reckless Conduct; Defined & Punished.

(a) A person is guilty of reckless conduct if he:

(1) recklessly engages in conduct which unjustifiably places or may place another in danger of death or serious bodily injury;

(2) intentionally points a firearm at or in the direction of another, whether or not the defendant believes it to be loaded.

(b) Reckless conduct is a misdemeanor.

CLRC COMMENT: No change.

§ 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.

(b) Terroristic conduct is a felony of the third degree.

CLRC COMMENT: Punctuation change to clarify language.

§ 19.60. Terrorizing; Defined & Punished.

(a) A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, to any person and the natural and probable consequence of such a threat, is to place the person to whom the threat is communicated or the person threatened in reasonable fear that crime will be committed.

(b) Terrorizing is a felony of the third degree.

CLRC COMMENT: No change.

§ 19.69. Definitions.

Unless otherwise indicated, as used in § 19.70:

(a) *Harasses* or *harassment* means a knowing and willful course of conduct, whether physical, verbal, written, electronic, telephonic, via or by use of a computer, computer network, computer system, telephone network, data network, text message, instant message, or otherwise, directed at a specific person which alarms, annoys, or distresses the person, and which serves no legitimate purpose. Such course of conduct must be of a nature to cause a reasonable person to suffer substantial emotional distress, and must cause substantial emotional distress.

(b) *Course of conduct* means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Constitutionally and statutorily protected activity, including, but *not* limited to, picketing as a result of a labor dispute, is *not* included in this definition.

(c) *Credible threat* means any threat, physical or verbal, overtly or subtly manifested, constituting a threat with the intent and apparent ability to carry out the threat with the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. Such threatening advance must be against the life of, or a threat to cause bodily injury to, the person threatened or to a member of his or her immediate family.

(d) *Computer* means any electronic, magnetic, optical, electrochemical, *or* other high-speed data processing device performing logical, arithmetic, *or* storage functions, and includes all computer equipment connected *or* related to such a device in a computer system *or* computer network, but *shall not* include an automated typewriter or typesetter, a portable hand-held calculator, *or* other similar device.

(e) *Computer network* means two (2) or more computers or computer systems interconnected by communication lines, including microwave, electronic, or any other form of communication.

(f) *Computer system* means a set of interconnected computer equipment intended to operate as a cohesive system.

CLRC COMMENT: No change.

§ 19.70. Stalking.

(a) A person is guilty of simple stalking if he or she willfully, maliciously, and repeatedly, follows or harasses another person or ~~who~~ makes a credible threat with intent to place that person or a member of his or her immediate family in fear of death or bodily injury.

(b) A person is guilty of advanced stalking if he or she violates Subsection (a) of this Section when there is a temporary restraining order or an injunction or both or any other court order in effect prohibiting the behavior described in that

Subsection against the same party.

(c) A person is guilty of advanced stalking if he or she violates Subsection (a) of this Section a second or subsequent time against the same victim, within seven (7) years of a prior conviction under that Subsection, and involving an harassment or a credible threat of violence, as defined in §19.69 of this Chapter.

(d) Simple stalking is a felony of the third degree.

(e) Advanced stalking is a felony of the second degree.

(f) This Section *shall not* apply to conduct which occurs during labor picketing.

CLRC COMMENT: Grammatical correction.

§ 19.80. Strangulation; Defined & Punished.

(a) A person is guilty of strangulation if he knowingly or intentionally, against the will of another, impedes the normal breathing or circulation of the blood of another by applying pressure to the throat or neck or by blocking the nose or mouth of another.

(b) Strangulation is a felony of the third degree; provided, that any person convicted of strangulation shall not be eligible for work release or educational programs outside the confines of prison.

CLRC COMMENT: No change.

§ 19.81. 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 of the third degree~~ misdemeanor.

CLRC COMMENT: Amend to reduce offense level from a felony to a misdemeanor. Recommend similar amendment to 9 GCA § 30.300 (Interfering with the Reporting of Family Violence) for consistency.

CHAPTER 22

KIDNAPPING AND RELATED OFFENSES

§ 22.10. General Definitions - Ref. § 16.10.

As used in this chapter, the terms bodily injury and serious bodily injury have the meanings provided by § 16.10.

CLRC COMMENT: No change.

§ 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 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.

(b) Kidnapping is a felony of the first degree unless the defendant voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree. In the case of kidnapping as a felony of the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years and may impose a maximum sentence of up to twenty-five (25) years; said minimum term shall not be suspended nor probation be imposed in lieu of such 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.

(c) A removal or confinement is unlawful within the meaning of this section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of fourteen (14) or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

CLRC COMMENT: No change.

§ 22.30. Felonious Restraint; Defined & Punished.

A person commits a felony of the third degree if he knowingly:

(a) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or

(b) holds another in a condition of involuntary servitude.

CLRC COMMENT: No change.

§ 22.35. Unlawful Restraint; Defined & Punished.

(a) A person commits the offense of unlawful restraint when he knowingly, without legal authority, detains another.

(b) Unlawful restraint, punishment for. Unlawful restraint is a misdemeanor.

CLRC COMMENT: No change.

§ 22.40. Child Stealing; Defined & Punished.

(a) A person is guilty of child stealing when he takes or keeps a child who is less than fourteen (14) years old and who is not his natural or adopted child with intent to conceal that child from his parent, legal guardian or other person having that child in his care or custody or under his control.

(b) This section shall not apply to a relative of a child who believes that taking or keeping that child is necessary to protect him from physical or emotional harm.

(c) Child stealing is a felony of the third degree.

CLRC COMMENT: No change.

§ 22.50. Custodial Interference; Defined & Punished.

(a) A person is guilty of custodial interference in the first degree if:

(1) Being a relative of the person, he knowingly takes or entices a person less than eighteen (18) years old from his lawful custody knowing that he has no right to do so and during the taking, subjects the person to serious bodily injury.

(b) A person is guilty of custodial interference in the second degree if:

(1) not being a relative of the person, he knowingly takes or entices a person less than eighteen (18) years old from his lawful custodian, knowing that he has no right to do so; or

(2) he knowingly takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or an institution.

(c) A person is guilty of custodial interference in the third degree if being a parent of a child and with knowledge of court order relating to the custody of that child, violates the court order and takes or keeps the child with intent to conceal him from his legal guardian or other person having that child in his care or custody or under his control.

(d) Custodial interference in the first degree is a felony of the second degree; custodial interference in the second degree is a felony of the third degree and custodial interference in the third degree is a misdemeanor.

CLRC COMMENT: No change.

§ 22.60. Criminal Intimidation, Defined & Punished.

(a) A person is guilty of criminal intimidation if he knowingly compels or induces another to do an act which the latter has a legal privilege not to do or to refrain from doing an act which the latter has a legal privilege to do by threatening to:

(1) commit any criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(4) take or withhold action as an official or to cause an official to take or withhold action.

(b) Criminal intimidation is a misdemeanor.

CLRC COMMENT: No change.

CHAPTER 25

SEXUAL OFFENSES

§ 25.10. Definitions.

(a) As used in this Chapter:

(1) "Actor" means a person accused of criminal sexual conduct;

(2) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act.

(A) A person who is mentally incapacitated or physically helpless as defined by this Chapter cannot consent to a sexual act.

(B) Corroboration of the victim's testimony is not required to show lack of consent.

(3) "Force" or "Coercion" includes, but is not limited to, any of the following circumstances:

(A) when the actor overcomes the victim through the actual application of physical force or physical violence;

(B) when the actor coerces the victim to submit by threatening to use force or violence on the victim and the victim believes that the actor has the present ability to execute these threats;

(C) when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person and the victim believes that the actor has the ability to execute this threat. As used in this Subsection, to retaliate includes threats of physical punishment, kidnapping, or extortion;

(D) when the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable; or

(E) when the actor, through concealment or by the element of surprise, is able to overcome the victim.

(4) "Intimate Parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being;

(5) "Mentally Impaired" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct;

(6) "Mentally Incapacitated" means

(A) that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent; or

(B) that a person is voluntarily under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct.

(7) "Physically Helpless" means that a person is

(A) unconscious,

(B) asleep,

(C) unable to withhold consent or to withdraw consent because of a physical condition, or

(D) for any other reason, is physically unable to communicate unwillingness to an act;

(8) "Personal Injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(9) "Sexual Contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification;

(10) “Sexual Penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required; and

(11) “Victim” means the person alleging to have been subjected to criminal sexual conduct

(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.

(14) “Cunnilingus” is the touching of the urethral opening, vaginal opening, or labia with the actor’s mouth.

(b) Whenever in this Chapter the criminality of conduct depends on a child's being below the age of fourteen (14), it is no defense that the defendant reasonably believed the child to be fourteen (14) or older. Whenever in this Chapter the criminality of conduct depends on a child's being below a specified age older than fourteen (14), it is an affirmative defense that the defendant reasonably believed the child to be of that age or above.

CLRC COMMENT: Amend to add new definitions of terms used in this Chapter.

§ 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:

(1) the victim is under fourteen (14) years of age;

(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;

(3) sexual penetration occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(A) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless; or

(B) the actor uses force or coercion to accomplish the sexual penetration.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration; and

(1) the actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the first degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.15(a) shall be sentenced to a minimum of fifteen (15) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole if the victim is twelve (12) years of age or older at the time that the crime was committed; or a minimum of twenty-five (25) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole if the victim is under the age of twelve (12) years old at the time that the crime was committed. The term imposed shall not be suspended, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of said minimum term; nor shall work release or educational programs outside the confines of prison be granted; nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such

sentence shall include a special parole term of not less than life with mandatory lifetime monitoring by the Parole Office, in addition to such time of imprisonment.

(a) Any person convicted of criminal sexual conduct under § 25.15(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration, as defined in § 25.10 of this Chapter shall be sentenced to a minimum of twenty-five (25) years imprisonment and may be sentenced to life imprisonment without the possibility of parole. Said term shall not be suspended as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

CLRC COMMENT: No change.

§ 25.20. Second Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(1) that other person is under fourteen (14) years of age;

(2) that other person 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, or is related by blood or affinity to the fourth degree to the victim, or is in a position of authority over the victim and the actor used this authority to coerce the victim to submit;

(3) sexual contact occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(A) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless; or

(B) the actor uses force or coercion to accomplish the sexual contact.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact; and

(7) the actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the second degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.20(a) shall be sentenced to a minimum of five (5) years to a maximum of fifteen (15) years imprisonment without the possibility of parole if the victim is twelve (12) years of age or older at the time that the crime was committed; or a minimum of ten (10) years to a maximum of twenty (20) years imprisonment if the victim is under the age of twelve (12) years old at the time that the crime was committed. The term imposed shall not be suspended, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of said minimum term; nor shall work release or educational programs outside the confines of prison be granted; nor shall parole be granted; nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such sentence shall include a special parole term of not less than life with mandatory lifetime monitoring by the Parole Office, in addition to such time of imprisonment.

(c) Any person convicted of criminal sexual conduct under § 25.20(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 shall be sentenced to a minimum of fifteen (15) years imprisonment and may be sentenced to life imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

CLRC COMMENT: No change.

§ 25.25. Third Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(1) that other person is at least fourteen (14) years of age and under sixteen (16) years of age;

(2) force or coercion is used to accomplish the sexual penetration; and

(3) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the third degree is a felony of the second degree.

(c) Any person previously convicted of criminal sexual conduct under § 25.25(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 of this Chapter shall be sentenced to ten (10) years imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

CLRC COMMENT: No change.

§ 25.30. Fourth Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exists:

(1) force or coercion is used to accomplish the sexual contact;

(2) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless;

(3) the victim is at least fourteen (14) years of age and under sixteen (16) years of age.

(b) Criminal sexual conduct in the fourth degree is a felony of the third degree, except, where the actor is a first time offender and the victim is eighteen (18) years of age or older, it shall be a misdemeanor.

CLRC COMMENT: No change.

§ 25.35. Assault with Intent to Commit Criminal Sexual Conduct.

Assault with intent to commit criminal sexual conduct involving penetration is a felony in a third degree.

CLRC COMMENT: No change.

§ 25.40. Victim's Testimony Need Not be Corroborated.

The testimony of a victim need not be corroborated in prosecutions under §§ 25.15 through 25.35.

CLRC COMMENT: No change.

§ 25.45. Resistance Not Required.

A victim need not resist the actor for a proper prosecution under §§ 25.15 through 25.35.

CLRC COMMENT: No change.

CHAPTER 25A

SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY

ARTICLE 1
ELECTRONIC DISPLAY AND ENTICEMENT

§ 25A101. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that there is a critical need to clearly and explicitly define material that is obscene, material that is pornographic for minors and child pornography, as well as to update Guam's laws to protect children from internet predators. The internet is arguably the most important learning tool of the Twenty-first (21st) Century. Unfortunately, the same internet also poses one of the greatest threats to child safety.

It is the intent of *I Liheslatura* to ensure that our laws are strong enough to adequately protect Guam's children from online predators and child pornography and to severely punish the offenders.

CLRC COMMENT: No change.

§ 25A102. Indecent Electronic Display to a Child.

(a) Any person who intentionally masturbates or intentionally exposes the genitals of him or herself, or of another, in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service, and who knows or should know or has reason to believe that the transmission is viewed on a computer or other device capable of electronic data storage or transmission, by:

(1) a minor known by the person to be under the age of eighteen (18) years;

(2) 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

(3) another person who represents him or herself to be under the age of eighteen (18) years is guilty of indecent electronic display to a child.

(b) Indecent electronic display to a child is a Third Degree Felony.

~~(c) 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.~~

CLRC COMMENT: Amend § 25A102 (c), 25A103 by deleting the law enforcement exception from each and having a new section that the law enforcement exception applies to all offense conduct in Chapter 25A.

§ 25A103. 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~~

(B) with another person who represents him or herself to be under the age of eighteen (18) years,

(2) with the intent to promote or facilitate the commission of an unlawful sexual act or sexual offense in violation of Guam law, or another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, is guilty of electronic enticement of a child as a Third Degree Felony.

(b) Electronic enticement of a child under this Section is a Third Degree Felony.

(c) Each separate use of a computer online service, internet service, or any other device capable of electronic data storage or transmission wherein an offense described in this Section is committed may be charged as a separate offense.

~~(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.~~

CLRC COMMENT: Amend § 25A103 by striking (a) 1 (B) because it is redundant and included in (a) 1 (A); same for §§ 25A104, 25A105.

§ 25A104. Electronic Enticement of a Child as a Second Degree Felony.

(a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission:

(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,

(2) with the intent to promote or facilitate the commission of a felony, or another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, agrees to meet with the minor, or with another person who represents him or herself to be a minor under the age of eighteen (18) years; and

(3) intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child as a Second Degree Felony.

(b) Electronic enticement of a child under this Section is a Second Degree Felony.

CLRC COMMENT: Delete (a)(1)(B) as reckless disregard is covered under knowing.

§ 25A105. Electronic Enticement of a Child as a First Degree Felony.

(a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission:

(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,

(2) with the intent to promote or facilitate the commission of a felony:

(A) that is murder or aggravated murder as defined in Title 9 GCA Chapter 16;

(B) that is a first degree felony; or

(C) that is another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, agrees to meet with the minor, or with another person who represents him or herself to be a minor under the age of eighteen (18) years; and

(3) intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child as a First Degree Felony.

(b) Electronic enticement of a child under this Section is a First Degree Felony.

CLRC COMMENT: Delete subsection (a)(1)(B) as reckless disregard is covered under knowing.

§ 25A106. Electronic Enticement; No Defense.

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.

CLRC COMMENT: Reenacted and consolidated from 25A102(c) and 25A103(d).

ARTICLE 2
CHILD PORNOGRAPHY

§ 25A201. Definitions.

As used in this Chapter:

(a) Child pornography means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(1) the pornographic production of the visual representation involves the use of a minor engaging in sexual conduct; or

(2) the pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

(b) Community standards means the standards of Guam.

(c) Computer means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes, all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

(d) Computer equipment means any equipment or devices, including all input, output, processing, storage, software, or communications facilities, intended to interface with the computer.

(e) Computer network means two (2) or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

(f) Computer program or software means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

(g) Computer services includes, but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

(h) Computer system means a set of interconnected computer equipment intended to operate as a cohesive system.

(i) Data means information, facts, concepts, software, or instructions prepared for use in a computer, computer system, or computer network.

(j) Lascivious means tending to incite lust to deprave the morals with respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

(k) Material means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

(l) Minor means any person less than eighteen (18) years old.

(m) Pornographic shall have the same meaning as in Title 9 GCA Chapter 28, Article 2.

(n) Sadomasochistic abuse means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(o) Sexual conduct means acts of sexual penetration, sexual contact, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

(p) Visual representation includes, but is not limited to, undeveloped film and videotape and data stored on

computer disk or by electronic means that are capable of conversion into a visual image.

(q) Disseminate means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

CLRC COMMENT: No change.

§ 25A202. Possession of Child Pornography.

(a) A person commits the offense of possession of child pornography if, knowing or having reason to know its character and content, the person possesses:

(1) child pornography;

(2) any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or

(3) any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Possession of child pornography under this Section is a Second Degree Felony.

CLRC COMMENT: No change.

§ 25A203. Dissemination of Child Pornography.

(a) A person commits the offense of dissemination of child pornography if, knowing or having reason to know its character and content, the person:

(1) disseminates child pornography;

(2) reproduces child pornography with intent to disseminate;

(3) disseminates any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography;

(4) disseminates any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(5) possesses ten (10) or more images of any form of child pornography regardless of content, and the content of at least one (1) image contains one (1) or more of the following:

(A) a minor who is younger than the age of fourteen (14);

(B) sadomasochistic abuse of a minor;

(C) sexual penetration of a minor; or

(D) bestiality involving a minor.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Dissemination of child pornography under this Section is a First Degree Felony.

CLRC COMMENT: No change.

§ 25A204. Production of Child Pornography.

(a) A person commits the offense of production of child pornography if, knowing or having reason to know its character and content, the person produces, manufactures, reproduces, copies, photographs, films, videotapes, video captures, creates, directs, promotes, advertises, publishes, issues, or presents to show any visual depiction of child pornography as defined in § 25A201 of this Chapter, or any pornographic material where:

(1) the production of such visual depiction involves the use of a minor engaging in sexual conduct;

(2) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexual conduct;

(3) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct;

(4) there is visual material containing the lewd or lascivious display of a minor's intimate area underneath clothing or sexual conduct of a minor; or

(5) there is visual material containing the display of a minor's intimate area underneath clothing that is prohibited under 9 GCA § 70.35.

(b) The fact that a person engaged in the conduct specified by this Section is prima facie evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(c) Production of child pornography is a First Degree Felony.

CLRC COMMENT: No change.

CHAPTER 31

OFFENSES AGAINST THE FAMILY

§ 31.10. Bigamy; Defined & Punished.

(a) A married person is guilty of *bigamy*, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(1) the defendant believes that the prior spouse is dead;

(2) the defendant and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the defendant to be alive;

(3) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the defendant does not know that judgment to be invalid; or

(4) the defendant reasonably believes that he is legally eligible to remarry.

(b) A person is guilty of bigamy if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy.

CLRC COMMENT: No change.

§ 31.15. Incest: Defined & Punished.

A person is guilty of *incest,* a misdemeanor, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. Cohabit means to live together under the representation or appearance of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

CLRC COMMENT: No change.

§ 31.20. Abortion.

(a) *Abortion* means the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(b) An *abortion* may be performed:

(1) by a physician licensed to practice medicine this Territory or by a physician practicing medicine in the employ of the government of the United States;

(2) in the physician's adequately equipped medical clinic or in a hospital approved or operated by the United States or this Territory; and

(3) (A) within 13 weeks after the commencement of the pregnancy; or

(B) within 26 weeks after the commencement of the pregnancy if the physician has reasonably determined using all available means:

(i) that the child would be born with a grave physical or mental defect; or

(ii) that the pregnancy resulted from rape or incest; or

(C) at any time after the commencement of pregnancy if the physician reasonably determines using all available means that there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother.

CLRC COMMENT: No change.

§ 31.21 Illegal Abortions Punished.

Any person performing an abortion in circumstances other than permitted by § 31.20 shall be guilty of a third degree felony.

CLRC COMMENT: No change.

§ 31.22 Refusal to Participate in Abortion.

(a) (1) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any person employed or with staff privileges at a hospital, facility or clinic to directly participate in the induction or performance of an abortion, if such employee or other person has filed a written statement with the employer or the hospital, facility or clinic indicating a moral, ethical or religious basis for refusal to participate in the abortion.

(2) No such employee or other person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his refusal to participate in an abortion. No such employee of a hospital, facility or clinic which does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of such person's participation in the performance of an abortion in other than such hospital, facility or clinic.

(3) No employer shall refuse to employ any person because of such person's refusal for moral, ethical or religious reasons to participate in an abortion, unless such person would be assigned in the normal course of business of any hospital, facility or clinic to work in those parts of the hospital, facility or clinic where abortion patients are cared for. No provision of this Chapter prohibits any hospital, facility or clinic which permits the performance of abortions from inquiring whether the employee or prospective employee would advance a moral, ethical or religious basis for refusal to participate in an abortion before hiring or assigning such a person to that part of a hospital, facility or clinic where abortion patients are cared for.

(4) The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subsection shall not form the basis of any claim for damages.

(b) No hospital, facility, or clinic shall refuse staff privileges to a physician because of such physician's refusal to participate in the performance of an abortion for moral, ethical, or religious reasons.

(c) (1) Nothing in this Chapter shall require a non-profit hospital or other facility or clinic which is operated by a religious corporation or other religious organization or any administrative officer, employee, agent, or member of the governing board thereof, to perform or permit the performance of an abortion in such facility or clinic or to provide abortion services. No such non-profit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act.

(2) The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic which does not permit the performance of abortions on its premises shall post notice of such proscription in an area of such facility or clinic which is open to patients and prospective admittees.

(d) (1) This section shall not apply to medical emergency situations and spontaneous abortions.

(2) Any violation of this section is a misdemeanor.

CLRC COMMENT: No change.

§ 31.30. Child Abuse; Defined & Punished.

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

(1) he subjects a child to cruel mistreatment; or

(2) inflicts upon a child unjustifiable physical pain or mental suffering; or willfully causes or permits any child to suffer;

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

~~(2)~~ (3) 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)~~ (B) 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.

(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).

(d) As used in this Section:, neglect of a child shall consist in any of the following acts by anyone having the custody or control of the child:

(1) 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

(2) failure to do or permit to be done any act necessary for the child's physical or moral well-being.

CLRC COMMENT: Amendments to subsection (a) are for clarification, to remove redundant language and to clearly establish neglect as abuse. New subsection (d) defines neglect. Reference Cal. Penal Code § 11165.3 (The willful harming or injuring of a child or the endangering of the person or health of a child) and N.J.S.A 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes).

~~§ 31.35. Reporting of Suspected Child Abuse to Department of Public Health and Social Services.~~

~~[Repealed by P.L. 14-137 (1978)]~~

CLRC COMMENT: Remove previously repealed section.

~~§ 31.37. Registry of Cases of Suspected Child Abuse Reported to Department of Public Health and Social Services.~~

[Repealed by P.L. 14-137 (1987)]

CLRC COMMENT: Remove previously repealed section.

§ 31.40. Abuse of An Incompetent; Defined & Punished.

(a) A person is guilty of *abuse of an incompetent* when:

(1) he subjects an incompetent to cruel mistreatment; or

(2) having an incompetent in his care of custody or under his control, he:

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

(B) subjects that incompetent to cruel mistreatment; or

(C) unreasonably causes or permits the physical or emotional health of that incompetent to be endangered.

(b) As used in this Section, *incompetent* means a person who is unable to care for himself because of old age, or because of physical or mental illness, disease or defect.

(c) *Abuse of an incompetent* 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.

CLRC COMMENT: No change.

§ 31.45. Failure to Provide; Defined & Punished.

(a) A person is guilty of *failure to provide* when having a spouse, child or indigent parent whom he is legally obliged to support, he knowingly fails to furnish that person with necessary support.

(b) As used in this Section, support includes food, clothing, shelter, medical attention and education.

(c) As used in this Section, child includes a child conceived but not yet born.

CLRC COMMENT: No change.

§ 31.50. Surety for Support.

(a) If at any time before sentencing under any prosecution pursuant to § 31.45, the defendant appears before the court and enters into any undertaking with sufficient sureties in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will pay to the person having custody of such spouse, child or parent, such sum per month as may be fixed by the court to provide necessary food, clothing, shelter or medical attendance or other remedial care, then the court may suspend proceedings or sentence therein.

(b) The undertaking provided pursuant to Subsection (a) shall be valid and binding for one (1) year, or such lesser time as the court shall fix.

(c) Upon the failure of the defendant to comply with the undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had in the action or why sentence should not be imposed, whereupon the court may proceed with the action, or pass sentence or for good cause shown may modify the order and take a new undertaking and further suspend proceedings or sentence for a like period.

CLRC COMMENT: No change.

§ 31.55. Fine Imposed May be Used for Support.

In any case where there is a conviction of an offense under § 31.45 and a sentence to pay a fine, such fine may be directed by the court to be paid in whole or in part to the spouse, child or parent or guardian or custodian of such person.

CLRC COMMENT: No change.

~~**§ 31.60. Criminal Spouse Abuse: Penalty.**~~

[Repealed by P.L. 22-160:3 (1994)]

CLRC COMMENT: Remove previously repealed section.

~~**§ 31.65. Curfew Hours for Minors.**~~

~~(a) Definitions. As used in this Section:~~

~~(1) *Curfew Hours* means:~~

~~(A) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, *or* Thursday until 6:00 a.m. of the following day; and~~

~~(B)12:01 a.m. until 6:00 a.m. on any Saturday *or* Sunday.~~

~~(2) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, *but is not limited to*, a fire, a natural disaster, an automobile accident, *or* any situation requiring immediate action to prevent serious bodily injury *or* loss of life.~~

~~(3) *Establishment* means any privately-owned place of business operated for a profit to which the public is invited, including, *but not limited to*, any place of amusement *or* entertainment.~~

~~(4) *Guardian* means:~~

~~(A) a person who, under court order, is the guardian of the person of a minor; or~~

~~(B) a public *or* private agency with whom a minor has been placed by a court.~~

(5) *Minor* means any person under seventeen (17) years of age.

(6) *Operator* means any individual, firm, association, partnership, or corporation operating, managing, *or* conducting any establishment. The term includes the members *or* partners of an association *or* partnership and the officers of a corporation.

(7) *Parent* means a person who is:

(A) a natural parent, adoptive parent, *or* step-parent of another person; or

(B) at least eighteen (18) years of age and authorized by a parent *or* guardian to have the care and custody of a minor.

(8) *Public Place* means any place to which the public *or* a substantial group of the public has access and includes, *but is not limited to*, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(9) *Remain* means to:

(A) linger *or* stay; *or*

(B) fail to leave premises when requested to do so by a peace officer *or* the owner, operator, *or* other person in control of the premises.

(10) *Serious Bodily Injury* means bodily injury that creates a substantial risk of death *or* that causes death, serious permanent disfigurement, *or* protracted loss *or* impairment of the function of any bodily member *or* organ.

(b) Offenses.

(1) A minor commits an offense *if* he remains in any public place *or* on the premises of any establishment on Guam during curfew hours.

(2) A parent *or* guardian of a minor commits an offense *if* he knowingly permits, *or* by insufficient control allows, the minor to remain in any public place *or* on the premises of any establishment on Guam during curfew hours.

(3) The owner, operator, *or* any employee of an establishment commits an offense *if* he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(c) Defenses.

(1) It is a defense to prosecution under Subsection (b) that the minor was:

(A) accompanied by the minor's parent *or* guardian;

(B) on an errand at the direction of the minor's parent *or* guardian, without any detour *or* stop;

(C) engaged in an employment activity, *or* going to *or* returning home from an employment activity, without any detour *or* stop;

(D) involved in an emergency;

(E) on the sidewalk abutting the minor's residence *or* abutting the residence of a next-door neighbor *if* the neighbor did not complain to the police department about the minor's presence;

(F) attending *or* traveling to or returning home without detour from an official school, religious, *or* other recreational activity supervised by adults and sponsored by the government of Guam, a civic organization, *or* another similar entity that takes responsibility for the minor, *or* going to *or* returning home from, without any detour *or* stop, an official school, religious, *or* other recreational activity supervised by adults and sponsored by the government of Guam, a civic organization, *or* another similar entity that takes responsibility for the minor;

(G) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; *or*

(H) married *or* had been married, enlisted in a branch of the United States Armed Forces *or* the National Guard *or* had disabilities of minority removed in accordance with Article 3 of Chapter 4 of Title 19 GCA.

~~(2) It is a defense to prosecution under Subsection (b)(3) that the owner, operator, *or* employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.~~

~~(d) Enforcement. Before taking any enforcement action under this Section, a police officer *shall* ask the apparent offender's age and reason for being in the public place. The officer *shall* not issue a citation, take into custody *or* make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (c) is present.~~

~~(e) Penalties.~~

~~(1) A person who violates a provision of this Chapter is guilty of a separate offense for each day *or* part of a day during which the violation is committed, continued, *or* permitted. Each offense, upon conviction, is punishable by a fine *not to exceed* Five Hundred Dollars ($500).~~

~~(2) When required by §5104 of Title 19 GCA, as amended, the Superior Court *shall* waive original jurisdiction over a minor who violates Subsection (b)(1) of this Section and *shall* refer the minor to juvenile court.~~

CLRC COMMENT: Recommendation to repeal this section. This recommendation was based on questionable constitutionality of this section and was vigorously debated by the Commission. Attorney members of the Commission noted that the constitutionality of curfew laws has been widely challenged across the United States and believe this law would be struck down if were to be challenged in Guam. Some members conceded that this curfew law may be unconstitutional but because of Guam's problems with minors out past curfew they would prefer to leave it until it is challenged and struck down by the courts. This recommendation was opposed by the GPD member and a community member of the Commission.

§ 31.70. Leaving Children Unattended or Unsupervised in Motor Vehicles; Penalty; Authority of Law Enforcement Officer.

(a) A parent, legal guardian, or other person, at least twelve (12) years of age, responsible for a child five (5) years of age or younger, may not leave such child unattended or unsupervised in a motor vehicle:

(1) For a period in excess of fifteen (15) minutes; or

(2) For any period of time if the motor of the vehicle is running or the health of the child is in danger.

(b) Any person who knowingly violates the provisions of Subsection (a)(1) commits a petty misdemeanor.

(c) Any person who violates the provisions of Subsection (a)(2) is guilty of a violation, punishable by a fine not less than Fifty Dollars ($50) and not more than Five Hundred Dollars ($500).

(d) Any person who <u>knowingly</u> violates Subsection (a) and in so doing causes serious bodily injury, permanent disability, or permanent disfigurement to a child commits a felony of the third degree.

(e) Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of Subsection (a) may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.

(1) If the child is removed from the immediate area, notification should be placed on the vehicle.

(2) The child shall be remanded to the custody of the Child Protective Services Division pursuant to Title 19 GCA, Chapter 13, unless the law enforcement officer is able to locate the parents or legal guardian or other person responsible for the child.

CLRC COMMENT: Amend subsection (d) to include "knowingly" as the required mental state. Reference MPC § 2.02 (General Requirements of Culpability) and 9 GCA § 4.25 (Culpability).

CHAPTER 34

ARSON, NEGLIGENT BURNING, CRIMINAL MISCHIEF

§ 34.10. Definitions.

As used in this Chapter:

(a) *Property* means any form of real property or tangible personal property which is capable of being damaged or destroyed.

(b) *Habitable Property* means any structure, vehicle or vessel adapted for the accommodation or occupation of persons.

(c) *Property* is that of another if anyone other than the defendant has a possessory or proprietary interest in any portion thereof.

(d) *Forest land* means any brush covered land, cut-over land, forest, grasslands, jungle, or woods.

CLRC COMMENT: No change.

§ 34.20. Aggravated Arson; Defined & Punished.

(a) A person is guilty of aggravated arson if he recklessly damages any habitable property by means of fire or explosives in conscious disregard of a substantial risk that at the time of such conduct a person may be in such habitable property, whether or not a person is actually present.

(b) Aggravated arson is a second degree felony. In the case of aggravated arson 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.

CLRC COMMENT: No change.

§ 34.30. Arson; Defined & Punished.

(a) A person is guilty of *arson* if under circumstances not amounting to aggravated arson he starts a fire or causes an explosion, whether on his own property, another's property, or forest land:

(1) with the intention of defrauding an insurer; or

(2) in reckless disregard of a risk that his conduct will damage or destroy the property of another; or

(3) in reckless disregard of a risk that his conduct will damage or destroy forest land.

(b) Arson is a third degree felony.

CLRC COMMENT: No change.

§ 34.40. Negligent Burning; Defined & Punished.

(a) A person is guilty of *negligent burning* if he:

(1) negligently starts a fire or causes an explosion whether on his own property, another's property, or forest land, and thereby negligently endangers human life, or negligently places the property of another, or forest land, in danger of damage or destruction; or

(2) having started a fire, whether negligently or not, and knowing that its spread will endanger the life or property of another, or forest land, either fails to take reasonable measures to put out or control the fire, or fails to give a prompt fire alarm.

(b) Negligent burning is a misdemeanor. If a person guilty of negligent burning is offered Alternative Service Restitution in accordance with Article 6 of Chapter 80, 9 GCA, the restoration of forest lands is an allowable form of restitution or alternative community service.

CLRC COMMENT: No change.

§ 34.50. Criminal Mischief; Defined.

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~~.

CLRC COMMENT: Amendments for consistency with amendments to § 34.60.

§ 34.60. Criminal Mischief; Punished.

~~(a) A violation of subsections (b) or (d) of § 34.50 is a third degree felony~~.

(~~b~~ a) 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~~ b), 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 re-paint 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~~ b) 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.

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 for uniformity with 9 GCA Chapter 80 (Disposition of Offenders).

§ 34.70. Graffiti Prohibited.

(a) Definitions. For the purpose of this section, the following terms apply:

(1) *Broad-tipped indelible marker* means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half inch or greater.

(2) *Bona fide evidence of majority* means a document issued by a federal, state, county or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

(3) *Owner* means any and all persons with legal and/or equitable title to real property in Guam as their names and addresses are shown upon the records of the Department of Revenue of Taxation or the Department of Land Management.

(4) *Supervising Adult* means an individual eighteen (18) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.

(5) *Used or intended to be used* includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.

(b) No person shall write, paint or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property owned, operated or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm or corporation unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained.

(c) Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad-tipped indelible marker with the intent to violate the provisions of this section.

(d) Possession of spray paint or broad-tipped indelible markers by minors on public property is prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container or spray paint can or broad-tipped indelible marker while on public property, highway, street, alley, or way except in the company of a supervising adult.

(e) Possession of spray paint or broad-tipped indelible markers by minors on private property is prohibited without consent of the owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession of the aerosol container or marker while on his or her property.

(f) Any person violating subsections (b), (c), (d) or (e) shall be punished by a fine of one thousand dollars ($1,000.00) for the first offense, and two thousand five hundred dollars ($2,500.00) for the second offense; and for each subsequent offense by a fine of five thousand dollars ($5,000.00) or by imprisonment for a term *not to exceed* one hundred twenty (120) days or by both fine and imprisonment at the discretion of the court. In the case of a minor, the parents or legal guardian *shall* be responsible for 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.

(g) In addition to any punishment ordered under subsection (f), the court shall order any person found in violation of subsections (b), (c), (d) or (e) to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court. Where the defendant is a minor, the parents or legal guardian shall be jointly and severally liable with the minor to make such restitution.

(h) In addition to any punishment listed in subsections (f) and restitution ordered under subsection (g), the court shall order any person found in violation of subsection (b), (c), (d) or (e) to perform monitored community service in the removal of graffiti of *not less than* two hundred fifty (250) hours and *not more than* five hundred (500) hours.

(i) In addition to any punishment listed in subsections (f), (g) and (h), any adult convicted for violating subsections (b), (c), (d) or (e) is guilty of a misdemeanor punishable by imprisonment ~~for not less than a mandatory sixty (60) days~~.

(j) All personal property, including, but not limited to, automobiles and bicycles, used or intended to be used in violating subsections (b), (c), (d) or (e) shall be forfeitable to Guam. In any forfeiture under this section, the Court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by the laws of Guam, the Organic Act, and the U.S. Constitution.

(k) No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen years (18) shall buy any aerosol container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.

(l) Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers *shall*:

(1) Place a sign in clear public view at or near the display of such products stating:

"GRAFFITI IS A CRIME. ANY PERSON DEFACING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO ONE HUNDRED TWENTY (120) DAYS AND/OR A FINE UP TO FIVE THOUSAND DOLLARS ($5.000.00)."

(2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers which states:

"IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF TW0 HUNDRED FIFTY DOLLARS ($250.00)."

(m) Violation of subsection (l) shall result in a civil penalty of two hundred fifty dollars ($250.00) for a first offense and five hundred dollars ($500.00) for subsequent offenses. When three (3) violations of subsection (l) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two (2) years. Violation of such injunction shall be punished by a fine of two hundred fifty hundred dollars ($250.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers until payment of the fine, attorney's fees and costs.

(n) In addition to any punishment ordered under Subsection (f), (g), (h), (i) and (j), the court *shall* immediately, upon conviction of an offender charged with the defacement of property, revoke the license or instruction permit of any driver in violation of this Section subject to a period of time described hereafter:

(1) after one (1) conviction, six (6) months;

(2) after a second or subsequent conviction, one (1) year for each conviction.

Any person who was convicted of any offense as described in this Act upon being eligible to receive a license or instruction permit, *shall not* be eligible to receive a license or instruction permit until the entire penalty period has elapsed.

Any prior convictions resulting in the revocation of a driver's license or instruction permit *shall not* run concurrently with any existing or subsequent suspension, revocation, cancellation or denial which is provided for by law.

CLRC COMMENT: Amendments for clarification and for uniformity with 9 GCA Chapter 80 (Disposition of Offenders)

§ 34.80. Use of Fines Collected.

Effective upon the enactment of this Section, all monies collected by the enforcement of 9 GCA §§ 34.60 or 34.70 shall be deposited in the Appointed Counsel Trust Fund established under 7 GCA § 22111 for fees and expenses related to the legal defense of indigent persons and for other purposes as set forth by the Judicial Council.

CLRC COMMENT: No change.

§ 34.90. Destruction of Property: Penalty.

A person commits a misdemeanor if, he without the written permission of the owner or of the owner's agent or of the person in lawful possession:

(a) Maliciously tears down, damages, mutilates or destroys any sign, signboard or notice placed upon, or affixed to any property that belongs to the government of Guam, which sign, signboard or notice is intended to indicate or designate a road or highway or is intended to designate speed limits or a traffic hazard or is intended to direct travelers

from one point to another or is intended to advise of prohibited entry or relates to fires, fire control, trespassing or other matters involving the protection of the property;

(b) Wilfully opens, tears down or otherwise destroys any fence on the land of another or wilfully removes, injures, cuts or tampers with any lock or any locked gate or any locked chain or any other locked barrier on any road, track or trail leading into lands of another or maliciously tears down, mutilates or destroys any sign, signboard or other notice forbidding shooting on public or private property; or

(c) Enters any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing or injuring any lawful business or occupation carried on by the owner of such land, his agent or by the person in lawful possession; or

(d) Enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, any other or enters upon uncultivated and unenclosed lands belonging to, or occupied by, any other where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries on all roads and trails entering such lands:

(1) For the purpose of hunting, shooting, killing or destroying any animal or bird upon such lands; or

(2) Discharges any firearms upon such land or lands; or

(3) Refuses or fails to leave such lands immediately upon being requested to leave by the owner of such land, his agent or by the person in lawful possession; or

(4) Tears down, mutilates or destroys any sign, signboard or notice forbidding entry on such lands.

(e) Enters upon any lands declared closed to public entry by the Government where such closed lands are posted with notices declaring such closure at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through such lands declaring the lands closed to public entry or stating "no trespassing." The Director of the Department of Land Management, in compliance with the Administrative Adjudication Act, is authorized to designate as closed to public entry and post "no trespassing" signs on any portion or portions of property belonging to the Government upon his determination that such designation is reasonably necessary for the purpose of public safety, preservation of government property, conservation of resources, fire prevention, safety of adjoining property owners or prevention of nuisances.

CLRC COMMENT: No change.

CHAPTER 37

BURGLARY AND HOME INVASION

ARTICLE 1
BURGLARY

§ 37.10. Definitions: Ref. to § 16.10.

As used in this Chapter:

(a) Habitable Property has the meaning provided by § 34.10 and includes any such property whether or not a person is actually present therein.

(b) Night means the period between thirty (30) minutes past sunset and thirty (30) minutes before sunrise.

(c) Deadly Weapon has the meaning provided by §16.10, Title 9, Guam Code Annotated.

(d) Motor Vehicle, Semi-Trailer, Trailer, Truck, Truck-Tractor, Vehicle, and Vehicle Combination are defined by § 5101, Title 16, Guam Code Annotated; and Motor Vehicle, Motor Bus. Motor Truck, Semi-Trailer, Trailer, and Vehicle are also defined by § 1102, Title 16, Guam Code Annotated.

(e) School means any public or private educational facility, including institutions of higher learning, which shall encompass all instructional, non-instructional, sports and extra curricular buildings and facilities.

CLRC COMMENT: No change.

§ 37.20. Burglary: Defined, Punishment Classified.

(a) A person is guilty of burglary if he enters or surreptitiously remains in any habitable property, building, or a separately secured or occupied portion thereof, or if he enters or surreptitiously remains in any School as defined in § 37.10(e) of this Chapter, with intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter, or a person is guilty of burglary if he enters or surreptitiously remains in any motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motor bus, motor truck, or vehicle, with intent to commit a crime therein. It is an affirmative defense to prosecution for burglary that the property, or building, or motor vehicle was abandoned or if the person reasonably believed that he or she owned, leased rented or was otherwise licensed to enter and remain in the habitable property, building, or a separately secured or occupied portion thereof, or the School, motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motorbus, motor truck, or vehicle.

(b) Burglary is a felony of the second degree. In the case of burglary 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, the court may sentence the offender to not more than five (5) years imprisonment as a third degree felony conviction, and the provisions of this Subsection prohibiting probation, suspension, parole or work release shall not be applicable to such offender.

(c) A second or subsequent offense of burglary to a school shall be a felony of the first degree. In the case of a second or subsequent conviction of burglary committed to a school as a felony of the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years, and may impose a maximum term of up to twenty (20) 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. However, if the offender is under the age of eighteen years the court shall have the discretion to suspend all or a portion of the minimum sentence, and may encourage the Balanced Approach Restorative Justice Process as provided in 19 GCA § 5134.

CLRC COMMENT: Amendment to § 37.20(a) to add an affirmative defense to burglary, and to § 37.20(c) to provide a reference to the Family Court Act within 9 GCA.

§ 37.30. Criminal Trespass: Defined, Punished, Defenses.

(a) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any habitable property or any building or any motor vehicle. An offense under this Subsection is a misdemeanor if it is committed in a dwelling or motor vehicle. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(1) actual communication to the defendant;

(2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) fencing or other enclosure manifestly designed to exclude intruders. An offense under this Subsection constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person or a peace officer. Otherwise it is a violation.

(c) It is an affirmative defense to prosecution under this Section that:

(1) the property or building involved in an offense under Subsection (a) was abandoned;

(2) the premises were at the time open to members of the public and the defendant complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) the defendant reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

CLRC COMMENT: No change.

~~**§ 37.40. The Breaking of Window Glass to Gain Access to Vehicles.**~~

~~(a) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, is guilty of an additional offense as a third degree felony.~~

~~(b) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, in which the broken glass causes bodily injury to an innocent person is guilty of an additional offense as a second degree felony.~~

CLRC COMMENT: To remove a duplicative section already covered by burglary-specific statutory language for vehicles in § 37.20 and because there is no need for second or third degree felony levels for breaking window glass, repeal § 37.40.

ARTICLE 2

HOME INVASION

CLRC COMMENT: No change.

§ 37.210. Home Invasion.

A person is guilty of home invasion when such person commits a crime of burglary, as defined by this Chapter, in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with the intent to commit a crime therein, and, in the course of committing the offense:

(a) acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a violent crime against the person of another person other than a participant in the crime who is actually present in such dwelling;

(b) such person is armed with explosives or a deadly weapon or dangerous instrument; or

(c) if any of the acts of a participant at any time during the burglary, or while attempting a burglary, or while fleeing from a burglary/attempted burglary, directly or indirectly, cause mental or emotional trauma, bodily injury, serious bodily injury, or the death of an occupant of the dwelling who is not a participant in the burglary.

CLRC COMMENT: No change.

37.220. In the Course of Committing Home Invasion.

An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense, or flight after the attempt or commission.

CLRC COMMENT: No change.

§ 37.230. Knowledge of Occupancy is Not a Defense.

It is no defense that the defendant reasonably believed that the dwelling was unoccupied, by a person who was not a participant in the crime, at the time the home invasion occurred.

CLRC COMMENT: No change.

§ 37.240. Home Invasion Punished.

(a) Home invasion is a first degree felony, and any person found guilty under this Section shall be sentenced to a term of imprisonment of which at least ten years may not be suspended or reduced by the court.

(b) The sentence imposed for home invasion shall run consecutively to any sentence for other crimes committed in conjunction with the home invasion.

CLRC COMMENT: No change.

ARTICLE 3

CARJACKING

§ 37.310. Carjacking.

A person is guilty of carjacking when such person commits a crime of burglary, as defined by this Chapter, in a vehicle, while a person other than a participant in the crime is actually present in such vehicle, with intent to commit a crime therein, and, in the course of committing the offense:

(a) acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a violent crime against the person of another person other than a participant in the crime who is actually present in such vehicle; or

(b) if any of the acts of a participant at any time during the burglary, or while attempting a burglary or while fleeing from a burglary/attempted burglary, directly or indirectly, cause the mental or emotional trauma, bodily injury, serious bodily injury or the death of an occupant of the vehicle who is not a participant in the burglary.

CLRC COMMENT: No change.

§ 37.320. Armed Carjacking.

Whoever commits the offense of carjacking while armed with, or having readily available, any pistol, or other firearm or imitation thereof, or other dangerous or deadly weapon, including a firearm, dirk, knife, switchblade, razor, blackjack, billy, or metallic or other false knuckles, or any object capable of inflicting death or serious bodily injury, shall be guilty of armed carjacking.

CLRC COMMENT: No change.

§ 37.330. In the Course of Committing Carjacking or Armed Carjacking.

An act shall be deemed “in the course of committing” the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.

CLRC COMMENT: No change.

§ 37.340. Knowledge of Occupancy is Not a Defense.

It is no defense the defendant reasonably believed that the vehicle was unoccupied, by a person who was not a participant in the crime, at the time the carjacking or armed carjacking occurred.

CLRC COMMENT: No change.

§ 37.350. Carjacking Punished.

(a) Carjacking is a first degree felony and any person found guilty under § 37.310 shall be sentenced to a term of imprisonment of which at least ten (10) years may not be suspended or reduced by the court.

(b) The sentence imposed for carjacking shall run consecutively to any sentence for other crimes committed in conjunction with the carjacking.

CLRC COMMENT: No change.

§ 37.360. Armed Carjacking Punished.

(a) Armed carjacking is a first degree felony and any person found guilty under § 37.320 shall be sentenced to a term of imprisonment of which at least fifteen (15) years may not be suspended or reduced by the court.

(b) The sentence imposed for armed carjacking shall run consecutively to any sentence for other crimes committed in conjunction with the carjacking.

CLRC COMMENT: No change.

CHAPTER 40

ROBBERY

CLRC COMMENT: No change.

§ 40.10. First Degree Robbery; Defined & Punished.

(a) A person is guilty of *robbery in the first degree* if, in the course of committing a theft, he:

(1) attempts to kill another; or

(2) intentionally inflicts or attempts to inflict serious bodily injury upon another.

(b) Robbery in the first degree is a felony of the first degree. In the case of robbery in the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years and may impose a maximum of up to twenty-five (25) years; the minimum term imposed shall not be suspended nor probation be imposed in lieu of said minimum term nor shall parole, work release or educational programs outside the confines of prison 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 time of imprisonment.

CLRC COMMENT: No change.

§ 40.20. Second Degree Robbery; Defined & Punished.

(a) A person is guilty of *robbery in the second degree* if, in the course of committing a theft, he:

(1) inflicts serious bodily injury upon another; or

(2) threatens another with or intentionally puts him in fear of immediate serious bodily injury; or

(3) is armed with or displays what appears to be explosives or a deadly weapon. ADeadly Weapon@ has the meaning provided by § 16.10.

(b) Robbery in the second degree is a felony of the second degree. In the case of robbery of the second degree 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.

CLRC COMMENT: No change.

§ 40.30. Third Degree Robbery; Defined & Punished.

(a) A person is guilty of robbery in the third degree if, in the course of committing a theft, he:

(1) uses force against another with intent to overcome his physical resistance or physical power of resistance; or

(2) threatens another with or intentionally puts him in fear of the imminent use of force against the person of anyone with intent to compel acquiescence to the taking of or escaping with property.

(b) Robbery in the third degree is a felony of the third degree.

CLRC COMMENT: No change.

§ 40.40. Definition of an Act.

An *act* occurs in the course of committing a theft if it occurs in an attempt to commit theft or in flight after the attempt or commission.

CLRC COMMENT: No change.

§ 40.50. No Defense of “Claim of Right”.

It is no defense to a prosecution of robbery in any of its degrees that there was no theft because the taking was under a claim of right.

CLRC COMMENT: No change.

CHAPTER 43

THEFT AND RELATED OFFENSES

ARTICLE 1

DEFINITIONS

§ 43.10. Definitions.

As used in this Chapter, unless a different meaning plainly is required:

(a) *Deprive* means:

(1) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

(2) to abandon the property under circumstances amounting to a reckless exposure to loss.

(b) *Movable Property* means property the location of which can be changed, including things growing on, or affixed to, or found in land, and documents although the rights represented thereby have no physical location. Immovable Property is all other property.

(c) *Obtain* means:

(1) in relation to property, to bring about a transfer or purported transfer of legal interest in the property, whether to the obtainer or another; or

(2) in relation to labor or service, to secure performance thereof.

(d) *Property* means anything of value, including real estate, tangible and intangible personal property, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, trade secrets, or agricultural product, which includes floriculture, horticulture, viticulture, aquaculture, forestry products and commodities, shrubbery, nuts, coffee, seeds, or other farm or plantation products or commodities grown by or raised by a bona fide farmer as defined by 5 GCA§ 60354(f).

(e) *Property of Another* includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(f) *Trade Secret* means the whole or any portion of phase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and is not generally available to the public, and which gives one who uses it an advantage over actual or potential competitors who do not know of or use the trade secret, or the contents of private and unpublished records used in the business of examining, certifying or insuring titles to real property. Proof that the owner takes measures to prevent information from becoming available to persons other than those selected by the owner to have access thereto for limited purposes gives rise to an inference that the information is secret.

CLRC COMMENT: No change.

§ 43.15. Theft a Single Offense.

Conduct denominated theft in this Chapter constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Chapter, notwithstanding the specification of a different manner in the accusatory pleading, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice of by surprise.

CLRC COMMENT: No change.

§ 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 ~~is 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 ~~amount~~ 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.

§ 43.21. Definition of Unauthorized Electrical Connections or Illegal Power Hook-Ups.

An illegal power hook-up is any connection to power lines which belong to the government of Guam, that is made without the prior written permission of the Guam Power Authority, or any power hook-up from a direct power line which bypasses or hinders meter registration. The conditions include, but are not limited to:

(a) External jumpers;

(b) Bypass on meter;

(c) Tap ahead of electric meter;

(d) Inverted (electric) or reversed substitution meter;

(e) Manipulation of meter dials;

(f) Foreign materials inside electric meter;

(g) Open potential line;

(h) Unmetered theft of service;

(i) Metered theft of service; or

(j) Any other unauthorized or illegal hook-up.

CLRC COMMENT: No change.

§ 43.25. Defenses; Conditions Upon Same.

(a) It is an affirmative defense to prosecution for theft that the defendant:

(1) was unaware that the property or service was that of another; or

(2) acted in good faith under a claim of right to the property or service involved or that he had a claim of right to acquire or dispose of it as he did.

(b) It is no defense that theft was from the defendant's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

CLRC COMMENT: No change.

§ 43.30. Theft of Property; Defined.

(a) A person is guilty of *theft* if he unlawfully takes or obtains or exercises unlawful control over, movable property of another with intent to deprive him thereof.

(b) A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with intent to deprive him thereof.

CLRC COMMENT: No change.

§ 43.31. Crime Against the Community; Defined and Punishment.

(a) A person is guilty of a Crime Against the Community if that person knowingly takes, obtains or exercises unlawful control over government-owned, leased or borrowed property, or interferes with, obstructs, or takes action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety; or (2) doing so results in a deprivation of public services, such as utility services, the education of public or private school students, or any government service intended to benefit the public.~~; or (3) does so for a purpose other than the original purpose for which the property or services were to be provided.~~

(b) A person is guilty of a Crime Against the Community if that person knowingly destroys, defaces, alters, tampers with or damages government-owned, leased or borrowed property.

(c) A Crime Against the Community shall be alleged, in an information, complaint or indictment, as a Special Allegation which enhances punishment when the defendant is convicted of another offense. A Crime Against the Community shall be tried to a jury if the underlying crime is tried to a jury.

(d) A person convicted of a Crime Against the Community shall be sentenced to:

(1) Insofar as is practicable, make restitution to the victim of the crime, including the government of Guam or the Federal government;

(2) Insofar as is practicable, perform community service intended to raise community awareness that a crime against the public interest has been committed and is being punished, including, *but not limited to*, repair, painting and cleaning of items which are stolen, damaged or defaced; or

(3) Serve one (1) year of incarceration and pay an additional fine of up to Five Thousand Dollars ($5,000.00) in addition to the sentence imposed for the underlying crime, if the underlying crime is a misdemeanor or felony. The court may suspend said term of incarceration and impose a term of probation instead.

CLRC COMMENT: Repeal § 43.31(a)(3) to remove vagueness and ambiguity.

§ 43.35. Theft by Deception; Defined.

(a) A person is guilty of *theft* if he intentionally obtains property of another by deception. A person deceives if he intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

(2) prevents another from acquiring information which would affect his judgment of a transaction;

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is not a matter of official record.

(b) The term deceive does not include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive typical members of the group addressed.

CLRC COMMENT: No change.

§ 43.40. Theft by Threatening; Defined; Defense.

(a) A person is guilty of *theft* if he intentionally obtains property of another by threatening to:

(1) inflict bodily injury on anyone or commit any other criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

(4) take or withhold action as an official, or cause an official to take or withhold action;

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the defendant purports to act;

(6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) do any other act which would not substantially benefit the defendant but which is calculated to harm another person.

(b) It is an affirmative defense to prosecution for extortion by threats to charge any person with a crime that the defendant honestly believed the threatened charge to be true and that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances to which such charge addressed.

CLRC COMMENT: No change.

§ 43.45. Theft of Property Lost, Mislaid or Delivered by Mistake; Defined.

A person who comes into control of property of another that he knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

CLRC COMMENT: No change.

§ 43.50. Theft by Receiving Stolen Property; Defined.

(a) A person is guilty of *theft* if he intentionally receives, retains or disposes of movable property of another knowing that it has been stolen or believing that it has probably been stolen. It is a defense to a charge of violating this Section that the defendant received, retained or disposed of the property with intent to restore it to the owner.

(b) Where the defendant is in the business of buying, selling or otherwise dealing in property, proof that he obtained stolen property without having made reasonable inquiry whether the person from whom he obtained it has the legal right to sell or deliver it, and that he obtained it under circumstances which should have caused him to make such inquiry, gives rise to an inference that he obtained it knowing that it has been stolen or believing that it has been probably been stolen.

(c) Any person or corporation which is in the business of buying or selling gold, diamonds, coins, silver, or gems or jewelry shall retain for a minimum of one (1) year after the last entry a log book of all purchases made from on-island sources, indicating the nature of the items bought, the name and address of the seller, the price paid, and the date of purchase. In addition, in the case of items purchased from a person not in the business of selling gold, coins, diamonds, gems, silver, or jewelry, the purchaser shall either take a picture of the seller, or shall obtain identification from the seller containing a picture. The above records shall be made available to law enforcement officers upon request.

(d) Any person or corporation which is in the business of buying or selling gold, diamonds, coins, silver, or gems or jewelry shall retain all items purchased on Guam from persons not business licensed for the purpose of buying or selling gold, diamonds, coins, silver, gems or jewelry for a period of seven (7) days before selling, melting, destroying, or otherwise disposing of such items purchased on Guam.

(e) It shall be unlawful for any person to knowingly purchase gold, diamonds, jewelry, silver, gems or coins from any person under the age of eighteen (18) years, provided that nothing herein shall be construed as prohibiting the parent or guardian of a minor child from selling gold, diamonds, jewelry, coins or gems belonging to a minor child, on behalf of said child.

(f) Any person, corporation or entity who, as a substantial part of a business, buys and sells used items, including copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans and including any contractor who buys copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, in the course of conducting his or her business, shall retain, for a minimum of one (1) year form authorized by the Chief of Police of all purchases of copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans from on-island sources, indicating the nature and a reasonable estimate of the size, shape, weight, and length of the items bought, the name, signature and address of the seller, the price paid, and the date of purchase, telephone number, and shall obtain and maintain a copy of each seller's identification documents, including, but not limited to, a government driver's license, government identification card or passport, and a copy of the registration certificate of the vehicles used to transport the copper wire, bronze, brass, aluminum and other non ferrous metals but shall not include recyclable aluminum cans, the name of the employee representing the scrap metal business in the transaction. The above records shall be made available to law enforcement officers upon request. Copies of all completed forms or paper of information required by this Section, immediately upon purchase of the copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, shall be immediately transmitted via email or by facsimile transmittal to the Guam Police Department.

(g) Any person, corporation or entity who, as a substantial part of a business, buys and sells used items, including copper wire, bronze, brass, aluminum and other non ferrous metals but shall not include recyclable aluminum cans, and including any contractor who buys copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, in the course of conducting his or her business, who purchases said items from persons who do not have a business license for buying or selling copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, shall keep such items for a period of seven (7) days before altering, selling, melting, destroying, or otherwise disposing of said items purchased on Guam.

(h) Any knowing violation of Subsections (c), (d) or (e) of § 43.50 of Chapter 43 of Title 9 GCA shall be a misdemeanor upon the first conviction of any such violation, and shall be a felony of the third degree for any subsequent offense. Any violation of Subsections (f) or (g) shall be a felony of the third degree. A third conviction of any such violation shall require revocation of the offender's business license.

(i) Any violation of subsections (f) or (g), *shall* be punishable by a term of one (1) to five (5) years in prison, a fine of Ten Thousand Dollars ($10,000) to Twenty-five Thousand Dollars ($25,000) and restitution per incident. The amount of restitution *shall* include the replacement cost of the item, the cost of repairs for damages caused by the theft and the cost associated with the loss of use of the item.

CLRC COMMENT: No change.

§ 43.51. Theft of Utilities.

(a) A person is guilty of *theft* if he knowingly tampers with, alters or by-passes meters for the purpose of obtaining electrical power, gas or water without paying compensation to the entity providing such services. A person commits theft if he knowingly diverts telephone service, electrical power, gas or water to his own benefit or to the benefit of another not entitled thereto with the intent to avoid payment to the entity providing such service.

(b) Unauthorized Electrical Connections; Bypass or Obstruction of Meter. Every user, contractor or business who shall unlawfully and knowingly injure, alter, or procure to be injured, make or cause to be made any connection in any manner whatsoever with any electric wire or electric appliance of any character whatsoever operated by any user, users, corporations or government entities authorized to generate, transmit and sell electric current, or who shall so willfully and knowingly with intent to injure or defraud, use or cause to be used any such connection in such manner as to supply any electric current for heat or light or power to any electric lamp, apparatus or device, by, or at which electric current is consumed or otherwise used or wasted, without passing through a meter for the measuring and registering of the quantity passing through such electric wire or apparatus, or who shall, knowingly or with like intent injure, alter or procure to be injured or altered any electric meter, or obstruct its working, or procure the same to be tampered with or injured, or use or cause to be used any electric meter, or appliance so tampered with or injured, shall be deemed guilty of a theft constituting a felony in the third degree, and shall be subject to any and all fines, penalties and terms of imprisonment applicable by law, as well as any and all fines payable to the Guam Power Authority.

CLRC COMMENT: No change.

§ 43.55. Theft of Services; Defined.

(a) A person is guilty of *theft* if he intentionally obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. Services include labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for services is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to an inference that the service was obtained by deception as to intention to pay.

(b) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

CLRC COMMENT: No change.

§ 43.56. Unauthorized Reception of Cable Service.

(a) Unauthorized Interception or Receipt or Assistance in Intercepting or Receiving Service; Definition of Assist in Intercepting or Receiving.'

(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this Section, the term >assist in intercepting or receiving' shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of Subparagraph (1).

(b) Penalties for Willful Violation.

(1) Any person who willfully violates Subsection (a)(1) shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisoned for not more than one (1) year, or both, for the first such offense and shall be guilty of a felony of the third degree and shall be punished by a fine of not more than Three Hundred Dollars ($300.00) or imprisoned for not more than three (3) years, or both, for any subsequent offense.

(2) Any person who violates Subsection (a)(1) willfully and for purposes of commercial advantage or private financial gain shall be guilty of a felony of the third degree and shall be punished by a fine of not more than Three Thousand Dollars ($3,000.00) or imprisoned for not more than three (3) years, or both, for the first such offense and

shall be guilty of a felony of the second degree and shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or imprisoned for not more than five (5) years, or both, for any subsequent offense.

(3) For purposes of all penalties and remedies established for violations of Subsection (a)(1), the prohibited activity established herein, as it applies to each such device, shall be deemed a separate violation.

CLRC COMMENT: No change.

§ 43.60. Theft of Property Held in Trust; Defined.

A person who in the course of business obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property as his own and fails to make the required disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

CLRC COMMENT: No change.

§ 43.65. Unauthorized Use of Vehicle: Defined; Punished; Defense.

(a) A person commits a misdemeanor if he operates an automobile, aircraft, motorcycle, motorboat or other motor-propelled vehicle or vessel, or sailboat, without consent of the owner or other person authorized to give consent.

(b) It is an affirmative defense to prosecution under this Section that the defendant reasonably believed that the owner or other person authorized to give consent would have consented to the operation had he known of it.

CLRC COMMENT: No change.

§ 43.70. Reimbursement to Owner of Stolen Livestock or Agricultural Products.

In any case where there is a conviction under the provisions of Chapter 43 of this Code and the property stolen by the defendant was livestock or agricultural product, as that term is used in § 43.10(d) of this Article, in addition to a fine or imprisonment imposed, the court shall direct that the defendant pay to the owner of the stolen livestock its fair market value, or to the owner of the stolen agricultural product the production costs and fair market value as determined by the court upon consultation with the Department of Agriculture. Failure to make such payments shall be deemed a failure to pay a fine and punished accordingly, which may include, but shall not be limited to, the confiscation of a defendant’s personal property such as the vehicle, or vehicles, or any equipment used in the theft. If a defendant is found unable to pay due to financial hardship, the court may require, but not be limited to: the auctioning of all personal property confiscated in accordance with this Section, or the performing of Alternative Community Service hours credited against the fine, or reimbursement imposed, or both, pursuant to Article 6 of Chapter 80, Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 43.75. Theft of Dog or Cat, When a Felony of the Second Degree.

It shall be theft punishable as a felony of the second degree, for any person:

(a) To steal any dog or cat for the purpose of or with the intent of holding the same for ransom or a reward for the return thereof; or

(b) To demand payment of a reward, ransom, or any thing of value for the return to the rightful owner of any dog or cat which is stolen, lost or strayed; or

(c) To refuse to return of a dog or a cat which is stolen, lost or strayed to the rightful owner except upon payment of a reward or ransom; or

(d) To steal any dog or cat for the purposes of killing or maiming the same; or

(e) To steal any dog for purpose of, or with intent of using the dog for any dog fight or fight with any other animals which could result in injury to the dog.

CLRC COMMENT: No change.

ARTICLE 2

RETAIL THEFT

§ 43.80. General Definitions.

For the purposes of this Article, the words and phrases defined in §§ 43.82 through 43.92 have the meanings ascribed to them in those sections unless a contrary meaning is clear from the context.

CLRC COMMENT: No change.

§ 43.81. Conceal Defined.

To *conceal* merchandise means that although there may be some notice of its presence, that merchandise is not visible through ordinary observation.

CLRC COMMENT: No change.

§ 43.82. Full Retail Value Defined.

Full Retail Value means the merchant's stated or advertised price of the merchandise.

CLRC COMMENT: No change.

§ 43.83. Merchandise Defined.

Merchandise means any item of tangible personal property.

CLRC COMMENT: No change.

§ 43.84. Merchant Defined.

Merchant means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchise or independent contractor of such owner or operator.

CLRC COMMENT: No change.

§ 43.85. Minor Defined.

Minor means a person who is less than eighteen (18) years of age, is unemancipated and resides with his parents or legal guardian.

CLRC COMMENT: No change.

§ 43.86. Person Defined.

Person means any natural person or individual.

CLRC COMMENT: No change.

§ 43.87. Peace Officer Defined.

Peace Officer has the meaning ascribed to that term in § 5.55 of the Criminal Procedure Code.

CLRC COMMENT: No change.

§ 43.88. Premises of a Retail Mercantile Establishment Defined.

P*remises of a Retail Mercantile Establishment* includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

CLRC COMMENT: No change.

§ 43.89. Shopping Cart Defined.

Shopping Cart means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

CLRC COMMENT: No change.

§ 43.90. Under-Ring Defined.

Under-Ring means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

CLRC COMMENT: No change.

§ 43.91. Retail Theft; Defined.

A person is guilty of *theft* if he knowingly:

(a) takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise;

(b) alters, transfers or removes any label, price tag, marking, indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of depriving the merchant of the full retail value of such value of merchandise;

(c) transfers any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise;

(d) under-rings with the intention of depriving the merchant of the full retail value of the merchandise; or

(e) removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal.

CLRC COMMENT: No change.

§ 43.92. Presumptions.

If any person:

(a) conceals upon his person or among his belongings, unpurchased merchandise displayed, held, stored or offered for sale in a retail mercantile establishment; and

(b) removes that merchandise beyond the last station for receiving payments for that merchandise in that retail mercantile establishment, such person shall be presumed to have possessed, carried away or transferred such merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

CLRC COMMENT: No change.

§ 43.93. Detention.

Any merchant who has reasonable grounds to believe that a person has committed retail theft may detain such person, on the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) to request identification;

(b) to verify such identification;

(c) to make reasonable oral inquiry as to whether such person has in his possession unpurchased merchandise and, to make reasonable investigation of the ownership of such merchandise;

(d) to inform a peace officer of the detention of the person and surrender custody of that person to a peace officer; or

(e) in the case of a minor, to immediately inform a peace officer and the parents or guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of such minor to such person.

CLRC COMMENT: No change.

§ 43.94. Affirmative Defense.

A detention, as permitted in this Article, does not constitute an arrest or unlawful restraint, as defined in § 22.35 of this Code, nor shall it render the merchant liable to the person so detained unless said detention is done unreasonably or without proper cause or justification.

CLRC COMMENT: No change.

§ 43.94.1. Severability.

If any part of this Article is declared invalid by a court, then the remainder of this Article shall still be in effect.

CLRC COMMENT: No change.

§ 43.95. Unlawful Use of Theft Detection Shielding *or* Deactivation Devices.

This Section defines and penalizes the distribution *or* possession of a detection shielding device *or* any tool *or* device designed to remove a theft detection device from merchandise prior to purchase for the intent to commit (*or* aid *or* abet) theft. A person who activates an anti-shoplifting device may be lawfully detained in a reasonable manner for a reasonable period of time.

(a) A person is guilty of unlawful distribution of a theft detection shielding device when he knowingly manufactures, sells, offers for sale *or* distributes in any way any laminated *or* coated bag intended to shield merchandise from detection by an electronic *or* magnetic theft detector.

(b) A person is guilty of unlawful possession of a theft detection shielding device when he knowingly possesses any laminated *or* coated bag *or* device intended to shield merchandise from detection by an electronic *or* magnetic theft detector, with the intent to commit (*or* aid *or* abet) theft.

(c) A person is guilty of unlawful possession of a theft detection device deactivator *or* remover when he knowingly possesses any tool *or* device designed to allow *or* capable of allowing the deactivation *or* removal from any merchandise of any theft detection device with the intent to use such tool *or* device to deactivate any theft detection device on, *or* to remove any theft detection device from, any merchandise without the permission of the merchant *or* person owning *or* lawfully holding said merchandise.

(d) A person is guilty of unlawful distribution of a theft detection device deactivator *or* remover when he knowingly manufacturers, sells, offers for sale *or* distributes in any way any tool *or* device designed to allow, *or* capable of allowing the deactivation *or* removal from any merchandise of any theft detection device without the permission of the merchant *or* person owning *or* lawfully holding said merchandise.

(e) A person is guilty of unlawful deactivation *or* removal of a theft detection device when he intentionally deactivates in a retail establishment a theft detection device on, *or* removes a theft detection device from, merchandise prior to purchase.

(f) Any person convicted for violating the provisions of Subsections (a), (b), (c), (d) *or* (e) of this Section where the value of the merchandise is *less than* Five Hundred Dollars ($500) is guilty of a petty misdemeanor. Any person convicted for violating the provisions of Subsections (a), (b), (c), (d) *or* (e) of this Section where the value of the merchandise is *more than* Five Hundred Dollars ($500) is guilty of a misdemeanor.

(g) The activation of an anti-shoplifting *or* inventory control device as a result of a person exiting the establishment *or* a protected security device within the area within the establishment *shall* constitute reasonable cause for the detention of the person so exiting by the owner *or* operator of the establishment *or* by an agent *or* employee of the owner *or* operator, provided notice has been posted to advise the patrons that the establishment utilizes anti-shoplifting *or* inventory control devices. Each such detention *shall* be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device *or* for the recovery of goods.

(h) Such taking into custody and detention by a law enforcement officer, security officer, merchant, merchant's employee *or* agent, if done in compliance with all the requirements of the foregoing Subsection, *shall* not render such law enforcement officer, security officer, merchant, merchant's employee *or* agent, criminally *or* civilly liable, including any liability for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress *or* defamation.

CLRC COMMENT: No change.

ARTICLE 3

ANTI-SKIMMING ACT

§ 43.96. Purpose.

This Article criminalizes the use of a scanning device *or* re-encoder to capture encoded information from a magnetic strip from a credit, debit, *or* other payment card and then places it on a different credit, debit, *or* other payment card with the intent to defraud.

CLRC COMMENT: No change.

§ 43.97. Short Title.

This Article *shall* be cited as the "Anti-Skimming Act."

CLRC COMMENT: No change.

§ 43.98. Definitions.

As used in this Article:

(a) *Scanning device* means a scanner, reader *or* any other electronic device that is used to access, read, scan, obtain, memorize *or* store, temporarily *or* permanently, information encoded on the magnetic strip *or* stripe of a payment card.

(b) *Re-encoder* means an electronic device that places encoded information from the magnetic strip *or* stripe of a payment card onto the magnetic strip *or* stripe of a different payment card.

(c) *Payment card* means a credit card, charge card, debit card, hotel key card, stored value card *or* any other card that is issued to an authorized card user and that allows the user to obtain, purchase *or* receive goods, services, money *or* anything else of value from a merchant.

(d) *Merchant* is defined as an owner *or* operator of any retail mercantile establishment, *or* any agent, employee, lessee, consignee, officer, director, franchisee *or* independent contractor of such owner *or* operator. A *merchant* means a person who receives from an authorized user of a payment card *or* someone the person believes to be an authorized user, a payment card *or* information from a payment card *or* what the person believes to be a payment card *or* information from a payment card as the instrument for obtaining, purchasing *or* receiving goods, services, money *or* anything else of value from the person.

(e) *Authorized card user* means any person with the empowerment, permission *or* competence to act in the usage of any payment card to include, but *not be limited to*, a credit card, debit card, hotel key card, stored value card *or* any other card that allows the user to obtain, purchase *or* receive goods, services, money *or* anything else of value from a merchant.

CLRC COMMENT: No change.

§ 43.99. Penalties.

(a) It is a felony of the third degree felony for a person to use:

(1) A scanning device to access, read, obtain, memorize *or* store, temporarily or permanently, information encoded on the magnetic strip *or* stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card *or* a merchant.

(2) A re-encoder to place information encoded on the magnetic strip *or* stripe of a payment card onto the magnetic strip *or* stripe of a different card without the permission of the authorized user of the card from which the information is being re-encoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card *or* a merchant.

(b) Any person who violates subparagraph (a)(1) *or* (2) a second *or* subsequent time commits a second degree felony.

CLRC COMMENT: No change.

CHAPTER 46

FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

ARTICLE

FORGERY AND FRAUDULENT PRACTICES

§ 46.10. Forgery; Defined & Punished.

(a) A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he:

(1) falsely makes a written instrument by drawing a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

(2) falsely completes a written instrument by transforming through adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(3) falsely alters a written instrument by change, without authorization by anyone entitled to grant it, of a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(4) induces another by deception to sign or execute a written instrument which is not what it has been represented to be; or

(5) utters any written instrument which he knows to be forged in a manner specified in Paragraphs (1), (2), (3) or (4).

(b) Written Instrument includes printing or any other method of recording information, money, coins, tokens, tickets, stamps, seals, credit cards, badges, trademarks and other symbols of value, right, privilege or identification.

(c) Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental agency, or part of an issue of stock, bonds or other instruments representing interests or claims against a corporate or other organization or its property. Forgery is a felony of the third degree if the writing is or purports to be a will, deed, contract, release, commercial instrument or other document evidencing, creating, transferring, altering, terminating or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

CLRC COMMENT: No change.

§ 46.15. Criminal Simulation; Defined & Punished.

A person commits a misdemeanor if, with intent to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess.

CLRC COMMENT: No change.

§ 46.20. Tampering With Recordable Documents; Defined & Punished.

A person commits a felony of the third degree if, with intent to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

CLRC COMMENT: No change.

§ 46.25. Tampering With Records to Deceive or Conceal; Defined & Punished.

A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with intent to deceive or injure anyone or to conceal any wrongdoing.

CLRC COMMENT: No change.

§ 46.30. Issuance of Dishonored Checks.

(a) Definitions. For the purpose of this section, the following terms have the meanings given them.

(1) *Check* means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(2) *Credit* means an arrangement or understanding with the drawee for the payment of a check.

(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) ~~$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 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.

(2) In a prosecution under this paragraph, the value of dishonored checks issued by the defendant in violation of this subsection within any six-month period may be aggregated and the defendant charged accordingly in applying this section.

(c) Proof of intent. Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

(1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

(2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection; or

(3) proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection.

Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within thirty (30) days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

(d) Proof of lack of funds or credit. If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

(e) Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

CLRC COMMENT: Grading values of offenses increased and second degree of offense created.

§ 46.35. Fraudulent Use of Credit Cards; Defined & Punished.

(a) A person commits an offense if he uses a credit card or the account number of a credit card account with the intent of obtaining property or services with knowledge that:

(1) the card or account number is stolen or forged;

(2) the card or account number has been revoked or cancelled; or

(3) for any other reason his use of the card is unauthorized.

(b) It is an affirmative defense to prosecution under Paragraph (3) of Subsection (a) if the defendant proves by a preponderance of the evidence that he had the ability and intended to meet all obligations to the issuer arising out of his use of the card.

(c) Credit card means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(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~~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).

CLRC COMMENT: Add offense levels and amend offense grading values.

§ 46.40. Deceptive Business Practices; Defined & Punished.

(a) A person commits a misdemeanor if in this course of business he:

(1) uses or possesses for a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

(3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) sells, offers or exposes for sale adulterated or mislabeled commodities. “Adulterated” means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulation, or, if none, as set by established commercial usage. “Mislabeled” means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulations or, if none, as set by established commercial usage;

(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof with the intent of promoting the purchase or sale of property or services;

(6) makes a false or misleading written statement with the intent of obtaining property or credit; or

(7) makes a false or misleading written statement with the intent of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(b) It is an affirmative defense to prosecution under Subsection (a) if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

CLRC COMMENT: No change.

§ 46.45. Bribery for Violation of Duty; Defined & Punished.

(a) A person commits a misdemeanor if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty or fidelity to which he is subject as:

(1) agent or employee of another;

(2) trustee, guardian, or other fiduciary;

(3) lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(4) officer, director, partner, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(5) arbitrator or other purportedly disinterested adjudicator or referee.

(b) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

(c) A person commits a misdemeanor if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this Section.

CLRC COMMENT: No change.

~~**§ 46.50. Rigging of Public Exhibitions; Defined; Failure to Report; Soliciting Punishment.**~~

~~(a) A person commits a misdemeanor if, with intent to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:~~

~~(1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or~~

~~(2) tampers with any person, animal or thing.~~

~~(b) A person commits a misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under Subsection (a).~~

~~A person commits a petty misdemeanor if he fails to report, with reasonable promptness, a solicitation to accept any benefit or to do any tampering, the giving or doing of which would be criminal under Subsection (a).~~

CLRC COMMENT: Recommendation to repeal 9 GCA § 46.50, which is related to greyhound racing as indicated in the Compiler comment, and now inapplicable as greyhound racing no longer exists in Guam.

§ 46.55. Defrauding Creditors; Defined & Punished.

(a) A person commits an offense, he:

(1) destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent to defeat enforcement of that security interest;

(2) sells, assigns, exchanges, secretes, injures, destroys or otherwise disposes of any property upon which he has previously executed a mortgage or any instrument that operates as such, with intent to defraud the mortgages or a purchaser thereof;

(3) secretes, removes, assigns, conveys or otherwise disposes of his property with intent to defraud a judgment creditor or to prevent that property from being made liable for the payment of his debts;

(4) with intent to defraud, buys, receives, conceals or aids in concealing personal property, knowing it or any interest therein to be hired, leased or held as collateral security; or

(5) Intentionally sells, mortgages, conveys, conceals or aids in concealing personal property received by him upon a written conditional sale or lease agreement, or any other written agreement by which it or any interest therein is held as collateral security, before performance of any conditions precedent to acquiring the title thereto (A) without the consent in writing of the conditional seller, lessor or other holder of the security interest or (B) without disclosure to any buyer or transferee of the existence and terms of the conditional sale, lease or security agreement.

(b) An offense under this Section is a felony of the third degree if the value of the property which is the subject of the offense exceeds Ten Thousand Dollars in value. Otherwise the offense is a misdemeanor.

CLRC COMMENT: No change.

§ 46.60. Fraud in Insolvency; Defined & Punished.

(a) A person commits a misdemeanor, if, with intent to defraud a creditor and with knowledge either that proceedings have been or are about to be instituted for the appointment of an administrator or that a composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he:

(1) conveys, transfers, removes, conceals, destroys encumbers or otherwise disposes of any part of or any interest in the debtor's estate;

(2) obtains any substantial part of or interest in the debtor's estate;

(3) presents to any creditor or to the administrator any writing or record relating to the debtor's estate or to a creditor's claim, knowing the writing or record to contain a false material statement;

(4) fails or refuses to disclose any information that he is required by law to furnish to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate; or

(5) misrepresents any information furnished to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate.

(b) As used in this Section, Aadministrator@ means an assignee or trustee for the benefit of creditors, a conservator, a receiver or any other person entitled to administer property for the benefit of creditors.

CLRC COMMENT: No change.

§ 46.65. Receiving Deposits in Failing Bank; Defined & Punished.

(a) As used in this Section, financial institution means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(b) An officer, manager or other person directing or participating in the direction of a financial institution commits a misdemeanor if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:

(1) due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and

(2) the person making the deposit or other payment is unaware of the precarious situation of the institution.

CLRC COMMENT: No change.

§ 46.70. Misapplication of Entrusted Funds; Defined & Punished.

(a) A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

(b) The offense is a misdemeanor if the amount involved exceeds $50; otherwise it is a petty misdemeanor.

(c) Fiduciary includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(d) Financial institution has the meaning provided in Subsection (a) of § 46.65.

CLRC COMMENT: No change.

§ 46.75. Procuring Execution of Financially Significant Instruments by Fraud, Defined & Punished.

A person commits a misdemeanor or if by deception he causes another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

CLRC COMMENT: No change.

§ 46.80. Impersonation; Identity Theft; Defined & Punished.

(a) A person commits an offense when that person:

(1) impersonates another or assumes a false identity and does an act in such assumed character or false identity to obtain a benefit for oneself or another, or to injure or defraud another;

(2) pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit for oneself or for another, or to injure or defraud another;

(3) impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;

(4) possesses or obtains any personal identifying information pertaining to another person, without the authorization of that person, and uses or attempts to use that information, or assists another person in using the information, for any unlawful purpose, including to:

(A) fraudulently obtain, or attempt to obtain, money, credit, goods, services, anything of value, or medical information in the name of another person;

(B) injure or defraud, or attempt to injure or defraud, another person;

(C) avoid, or attempt to avoid, the payment of debt or other legal obligation; *or*

(D) avoid, or attempt to avoid, prosecution for a crime in the name of the other person without the consent of that person.

(b) As used in this Section, *personal identifying information* means the name, address, telephone number, driver's license or driver's license number, social security card or social security number, passport or passport number, official government of Guam or other state identification card or number, mother's maiden name, demand deposit account number, savings account number, credit card or credit card number, or a debit card or debit card number, or any name or number that may be used, alone or in conjunction with any other information, to assume the identity of a person. The list in this Subsection is *not* exhaustive.

(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 ~~at least Five Thousand Dollars ($5,000.00); otherwise, it is a felony of the third degree~~ equal to or greater than Ten Thousand Dollars ($10,000.00).

(d) A person found guilty of violating any provisions of this Section shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of such violation. Financial loss may include any costs incurred by such victim in correcting the credit history of such victim, or any costs incurred in connection with

any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.

(e) In any case in which a person obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of Subsection (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did *not* commit the crime.

CLRC COMMENT: Add offense levels and amend offense grading values.

§ 46.85. Tampering with Vehicle Identification Number or Other Vehicle Identifiers.

A person commits a felony if he or she knowingly destroys, removes or conceals, or attempts to destroy, remove or conceal, any Vehicle Identification number (VIN) or other vehicle identifiers with intent to deceive or injure anyone or to conceal any wrongdoing including littering violations.

CLRC COMMENT: No change. (Note: this was added by PL 37-60:8 (Feb. 9, 2024)).

ARTICLE 2

TELEPHONE RECORDS; OBTAINING, SELLING, OR RECEIVING WITHOUT CONSENT

§ 46.90. Definitions.

As used in this Section:

(a) *Caller Identification Record* means a record that is delivered electronically to the recipient of a telephone call simultaneously with the reception of the telephone call and that indicates the telephone number from which the telephone call was initiated *or* similar information regarding the telephone call.

(b) *Customer* means a person who subscribes to telephone service.

(c) *Telephone Record* means a record in written, electronic *or* oral form, *except* a caller identification record and subscriber list information that is created by a telephone service provider and that contains any of the following information with respect to a customer:

(1) Telephone numbers that have been dialed by the customer.

(2) Telephone numbers pertaining to calls made to the customer.

(3) The time when calls were made by the customer *or* to the customer.

(4) The duration of calls made by the customer *or* to the customer.

(5) The location(s) from which calls were initiated by the customer *or* received from the customer.

(d) *Telephone Service* means the conveyance of two (2)-way voice communication in analog, digital *or* other form by any medium, including wire, cable, fiber optics, cellular, broadband personal communications services *or* other wireless technologies, satellite, microwave *or* at any frequency over any part of the electromagnetic spectrum. Telephone service includes the conveyance of voice communication over the Internet and telephone relay service.

(e) *Telephone Service Provider* means a person who provides telephone service to a customer.

CLRC COMMENT: No change.

§ 46.91. Prohibition on Use of Telephone Records.

No person may do any of the following:

(a) Obtain, attempt to obtain *or* conspire with another to obtain a telephone record that pertains to a customer who is a resident of Guam, without the customer's consent by doing any of the following:

(1) Making a false *or* deceptive statement to an employee, representative *or* agent of a telephone service provider.

(2) Making a false *or* deceptive statement to a customer of a telephone service provider.

(3) Accessing such customer's telephone record via the Internet.

(4) Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost *or* stolen *or* that has been obtained by fraud *or* contains a false, fictitious *or* fraudulent statement *or* representation.

(b) Ask another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner prohibited under this Section.

(c) Sell *or* offer to sell a telephone record obtained in a manner prohibited under this Section.

CLRC COMMENT: No change.

§ 46.92. Penalties:

(a) A person who violates this Section is guilty of a third degree felony, a fine *not to exceed* Ten Thousand Dollars ($10,000) *or* imprisonment *not to exceed* three (3) years *or* both, *if* the violation involves one (1) telephone record.

(b) A person who violates this Section is guilty of a second degree felony, a fine *not to exceed* Twenty-five Thousand Dollars ($25,000) *or* imprisonment *not to exceed* ten (10) years *or* both, *if* the violation involves two (2) *or* more telephone records.

(c) A person who violates this Section is guilty of a third degree felony, a fine *not to exceed* Fifty Thousand Dollars ($50,000) *or* imprisonment *not to exceed* fifteen (15) years *or* both, *if* the violation involves *more than* ten (10) telephone records.

CLRC COMMENT: No change.

§ 46.93. Additional Penalties.

(a) In addition to the penalties authorized under § 46.92, a person who violates this Section may be required to forfeit personal property used *or* intended to be used in the violation.

(b) In an action to enforce this Section, the court *shall* award to a person who is the subject of a telephone record involved in a violation of this Section all of the following:

(1) The amount of the person's pecuniary loss suffered because of a violation of this Section, *if* proof of the loss is submitted to the satisfaction of the court *or* One Thousand Dollars ($1,000), whichever is greater.

(2) The amount of any gain to the violator as a result of the violation.

CLRC COMMENT: No change.

§ 46.94. Exceptions.

This Section does *not* apply to any of the following:

(a) Action by a law enforcement agency in connection with the official duties of the law enforcement agency.

(b) A disclosure by a telephone service provider, *if* any, of the following applies:

(1) The telephone service provider reasonably believes the disclosure is necessary to do any of the following:

(A) Provide telephone service to a customer.

(B) Protect an individual *or* the telephone service provider from fraudulent, abusive *or* unlawful use of telephone service *or* a telephone record.

(2) The disclosure is made to the National Center for Missing and Exploited Children.

(3) The disclosure is authorized by Guam *or* federal law *or* regulation.

(4) The disclosure is related to testing the security procedures *or* systems of the telephone service provider for maintaining the confidentiality of customer information.

(5) The disclosure is to a government entity, *if* the telephone company provider reasonably believes that an emergency involving immediate danger of death *or* serious physical injury to any person justifies disclosure of the information.

(6) The disclosure is in connection with the sale *or* transfer of all *or* part of its business *or* the purchase *or* acquisition of a portion *or* all of a business *or* the migration of a customer from one (1) carrier to another.

(c) A disclosure pursuant to § 46.94 (b), *if* such disclosure is made reasonably and in good faith, notwithstanding any later determination that such action was *not* in fact authorized.

CLRC COMMENT: No change.

ARTICLE 3

MORTGAGE FRAUD

§ 46.100. Title.

This Act may be cited as the Mortgage Fraud Act.

CLRC COMMENT: No change.

§ 46.101. Definitions.

As used in this Act:

(a) *Mortgage lending process* means the process through which a person seeks *or* obtains a mortgage loan, including solicitation, application, *or* origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(b) *Mortgage loan*:

(1) means a loan *or* agreement made to extend credit to a person when the loan is secured by a deed, security deed, mortgage, security interest, deed of trust, *or* other document representing a security interest *or* lien upon any interest in one (1)-to-four (4) family residential property;

(2) includes the renewal *or* refinancing of any loan; and

(3) includes home equity loans.

(c) *Unlawful activity* means to directly engage in conduct *or* to solicit, request, command, encourage, *or* intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes *or* categories of crimes, *or* to attempt *or* conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged *or* indicted by any authority *or* is classified as a misdemeanor *or* a felony

(d) *Pattern of unlawful activity* means engaging in conduct which constitute the commission of at least three (3) episodes of unlawful activity, which episodes are *not* isolated, but have the same *or* similar purposes, results, participants, victims, *or* methods of commission, *or* otherwise are interrelated by distinguishing characteristics. Taken together, the episodes *shall* demonstrate continuing unlawful conduct and be related either to each other *or* to the enterprise. The most recent act constituting part of a pattern of unlawful activity as defined by this part *shall* have occurred within five (5) years of the commission of the next preceding act alleged as part of the pattern.

(e) *Sensitive personal identifying information* means any of the following information regarding an individual's:

(1) Social Security number;

(2) driver license number *or* other government issued identification number;

(3) financial account number *or* credit *or* debit card number;

(4) password *or* personal identification number *or* other identification required to gain access to a financial account *or* a secure website;

(5) automated *or* electronic signature;

(6) unique biometric data; and

(7) any other information that can be used to gain access to an individual's financial accounts *or* to obtain goods *or* services.

(f) *Value* means the value of the property, money, *or* thing obtained *or* sought to be obtained.

(g) *Person* includes any individual *or* entity capable of holding a legal *or* beneficial interest in property, including governmental entities.

(h) *Obtain* means to come into possession of, get, acquire or procure.

CLRC COMMENT: No change.

§ 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 Section 46.102(a) is guilty of a second degree felony.

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

§ 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) 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.

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

~~**§ 46.104. Mortgage Fraud Prosecutor and Investigators.**~~

~~(a) The Attorney General may employ:~~

~~(1) An attorney licensed to practice law who:~~

~~(A) has knowledge of the law related to mortgage fraud; and~~

~~(B) *if* possible, has a background *or* expertise in investigating and prosecuting mortgage fraud.~~

~~(2) At least two (2) investigators who have a background *or* expertise in investigating mortgage fraud.~~

~~(3) The attorney employed under Subsection (a) (1) has as that attorney's primary responsibility the prosecution of mortgage fraud.~~

~~(4) Each person employed under Subsection (b) *shall* have as that person's primary responsibility the investigation of mortgage fraud.~~

~~(5) clerks, interns, *or* other personnel to assist the attorney employed under Subsection (a) (1).~~

CLRC COMMENT: Repeal. The Attorney General has discretion and authority to hire prosecutors and investigators, without specific need for "mortgage fraud prosecutor and investigators"

ARTICLE 4

ANTI-PHISHING ACT

§ 46.401. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that phishing or pharming are acts that defraud someone by using a false website, or pretending to be a legitimate business on the web, and fraudulently obtaining identifying information. This Act enables lawsuits by internet service providers and owners of webpages or trademarks that are used without authorization in the conduct of a violation. It is the intent of *I Liheslatura* to ensure that phishing and pharming are illegal and that Guam has the ability to prosecute the bad actors that prey on the residents of Guam.

CLRC COMMENT: No change.

§ 46.402. Definitions.

As used in this Act:

(a) entity includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, or instrumentalities, or any other legal entity, whether for profit or not-for-profit;

(b) individual means a natural person;

(c) identifying information means any information that can be used to access an individual's financial accounts or to obtain goods and services, including, but not limited to, address, birth date, social security number, driver's license number, non-driver governmental identification number, telephone number, bank account number, student identification, credit or debit card number, personal identification number, unique biometric data, employee or payroll number, automated or electronic signature, computer image, photograph, screen name or password. The term does not include information that is lawfully obtained from publicly available information, or from federal or local government records lawfully made available to the general public;

(d) false pretenses means the representation of a fact or circumstance which is not true and is calculated to mislead;

(e) webpage means a location that has a single uniform resource locator (URL) with respect to the world wide web, or another location that can be accessed on the internet.

CLRC COMMENT: No change.

§ 46.403. Phishing and Pharming.

(a) Phishing. For the purposes of this Article 4, an individual or entity is guilty of phishing if, with intent to defraud or injure an individual, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone:

(1) the actor makes any communication under false pretenses purporting to be by or on behalf of a legitimate business, without the authority or approval of the business; and

(2) the actor uses that communication to induce, request, or solicit any person to provide identifying information or property.

(b) Pharming. For the purposes of this Article 4, an individual or entity is guilty of pharming if, with intent to defraud or injure an individual, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone:

(1) creates or operates a webpage that represents itself as belonging to or being associated with a legitimate business, without the authority or approval of such business, and that may induce any user of the internet to provide identifying information or property; or

(2) alters a setting on a user's computer or similar device or software program through which the user may search the internet and thereby causes any user of the internet to view a communication that represents itself as belonging to or being associated with a legitimate business, which message has been created or is operated without the authority or approval of such legitimate business and induces, requests or solicits any user of the internet to provide identifying information or property.

CLRC COMMENT: No change.

§ 46.404. Immunity for Disabling Phishing and Pharming Sites.

No internet registrar or internet service provider may be held liable under any provision of the laws of Guam for removing or disabling access to an internet domain name controlled or operated by such registrar or by such provider, or to content that resides on an internet website or other online location controlled or operated by such provider, and that such provider believes in good faith is used to engage in a violation of this Act.

CLRC COMMENT: No change.

§ 46.405. Violations.

(a) A person who violates this Act is guilty of a third degree felony, and is subject to a fine not to exceed Five Thousand Dollars ($5,000), or imprisonment not to exceed five (5) years, or both.

(b) The following persons may bring a civil action against a person who violates this Act:

(1) an internet service provider who is adversely affected by the violation;

(2) an owner of a webpage, computer server, or a trademark that is used without authorization in the violation; or

(3) the Attorney General.

(c) Except as provided by paragraph 3, a person permitted to bring a civil action may obtain either actual damages for a violation of this Act, or a civil penalty not to exceed One Hundred Fifty Thousand Dollars ($150,000) per violation of this Act.

CLRC COMMENT: No change.

§ 46.406. Applicability.

This Act shall apply to the discovery of a phishing or pharming incident that occurs on or after the effective date of this Act. This Act does not apply to a telecommunications provider's or internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

CLRC COMMENT: No change.

§ 46.407. 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.

CLRC COMMENT: No change.

§ 46.408. Effective Date.

This Act shall take effect one hundred twenty (120) days after the date of enactment.

CLRC COMMENT: No change.

ARTICLE 5

COMPUTER PROTECTION ACT

§ 46.501. Legislative Intent.

It is the intent of *I Liheslaturan Guåhan* to prohibit a person from using specified protected computers to relay or retransmit commercial electronic mail messages with the intent to deceive or mislead recipients, or an electronic mail service provider under specified circumstances; to prohibit a person from materially falsifying header information in commercial electronic mail messages under specified circumstances; to prohibit a person from registering for electronic mail accounts or domain names under specified circumstances; and to provide for specified penalties and fines.

CLRC COMMENT: No change.

§ 46.502. Definitions.

In this Act, the following words have the meanings indicated:

(a) *commercial electronic mail message* means an electronic message sent primarily for the purpose of commercial advertisement or promotion of:

(1) a commercial product;

(2) a commercial service;

(3) the content on an Internet website; or

(4) a website operated for a commercial purpose;

(b) *domain name* means any alphanumeric designation that is registered with or assigned by a domain name registrar, domain name registry, or other domain name registration authority as part of an electronic mail address on the internet;

(c) *electronic mail service provider* means any person, including an internet service provider, that is an intermediary in sending and receiving electronic mail, and that provides to the public the ability to send or receive electronic mail to or from an electronic mail account or online user account;

(d) *financial institution* means any financial institution of the type supervised under 11GCA, whether or not locally-chartered;

(e) *header information* means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mails, and any other information that appears in the line identifying or purporting to identify a person initiating the message, and technical information that authenticates the sender of an electronic mail message for network security or network management purposes;

(f) the term *initiate*, when used with respect to a commercial electronic mail message, means to originate or transmit the message or to procure the origination or transmission of the message, and *does not* include actions that constitute routine conveyances of such message;

(g) *internet* means the international computer network of both federal and nonfederal interoperable packet switched data networks;

(h) *internet protocol address* means the string of numbers by which a location on the internet is identified by routers or other computers connected to the internet;

(i) *materially falsified* means altered or concealed in a manner that would impair the ability of one of the following to identify, locate, or respond to a person who initiated an electronic mail message or to investigate an alleged violation of this Act:

(1) a recipient of the message;

(2) an internet access service processing the message on behalf of a recipient;

(3) a person alleging a violation of this Act; or

(4) a law enforcement agency;

(j) *multiple* means:

(1) more than ten (10) commercial electronic mail messages during a twenty four (24)-hour period;

(2) more than one hundred (100) commercial electronic mail messages during a thirty (30)-day period; or

(3) more than one thousand (1,000) commercial electronic mail messages during a one (1)-year period;

(k) *protected computer* means a computer used in intrastate or interstate communication;

(l) *routine conveyance* means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipients' addresses.

CLRC COMMENT: No change.

§ 46.503. Violations.

A person *may not* conspire to or knowingly:

(a) use a protected computer of another to relay or retransmit multiple commercial electronic mail messages with the intent to deceive or mislead recipients or an electronic mail service provider as to the origin of the message;

(b) materially falsify header information in multiple commercial electronic mail messages and intentionally initiate the transmission of the messages;

(c) register, using information that materially falsifies the identity of the actual registrant, for fifteen (15) or more electronic mail accounts or on-line user accounts of two or more domain names, and intentionally initiate the transmission of multiple commercial electronic mail messages from one or any combination of accounts or domain names;

(d) falsely represent the right to use five (5) or more internet protocol addresses and intentionally initiate the transmission of multiple commercial electronic mail messages from the internet protocol addresses;

(e) access a protected computer of another without authorization, and intentionally initiate the transmission of multiple electronic mail advertisements from or through the protected computer;

(f) violate Subsections (a), (b), (c), (d) or (e) of this Section by providing or selecting addresses to which a message was transmitted, knowing that:

(1) the electronic mail addresses of the recipients were obtained using an automated means from an internet website or proprietary online service operated by another person; and

(2) the website or online service included, at the time the addresses were obtained, a notice stating that the operator of the website or online service will *not* transfer addresses maintained by the website or online service to any other party for the purposes of initiating or enabling others to initiate electronic mail messages; or

(g) violate Subsections (a), (b), (c), (d) or (e) of this Section by providing or selecting electronic mail addresses of recipients obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

CLRC COMMENT: No change.

§ 46.504. Penalties.

(a) A person who violates § 46.503 (a), (b), (c), (d) or (e) is guilty of a third degree felony~~, and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars ($5,000), or both~~.

(b) A person who violates § 46.503 (a), (b), (c), (d) or (e) involving the transmission of more than two hundred fifty (250) commercial electronic mail messages during a twenty-four (24) hour period; two thousand five hundred (2,500) commercial electronic mail messages during any thirty (30)-day period; or twenty five thousand (25,000) commercial electronic mail messages during any one (1)- year period is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(c) A person who violates § 46.503 (c) or (d) involving twenty (20) or more electronic mail accounts, or ten (10) or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from the accounts or using the domain names is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(d) A person who violates § 46.503 (a), (b), (c), (d) or (e) that causes a loss of One Thousand Dollars ($1,000) or more during any one (1)-year period is guilty of a third degree felony~~, and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars ($5,000), or both~~.

(e) A person who violates § 46.503 (a), (b), (c), (d) or (e) in concert with three (3) or more other persons as the leader or organizer of the action that constitutes the violation is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000), or both~~.

(f) A person who violates § 46.503 (a), (b), (c), (d) or (e) in furtherance of a felony, or who has previously been convicted of an offense under the laws of Guam, another state, or under any federal law involving the transmission of multiple commercial electronic mail messages is guilty of a second degree felony~~, and upon conviction is subject to imprisonment not to exceed ten (10) years or a fine not to exceed Twenty Five Thousand Dollars ($25,000), or both~~.

(g) A person who violates § 46.503 (f) or (g) is guilty of a misdemeanor ~~felony, and upon conviction is subject to imprisonment not to exceed one (1) year or a fine not to exceed Five Thousand Dollars ($1,000), or both~~.

CLRC COMMENT: Removal of duplicative language and for uniformity with 9 GCA Chapter 80 (Disposition of Offenders). Subsection (a) provides for a third degree felony base penalty without first offender exception. Subsections (b), (c), (e), and (f) provide for second degree felony base penalty. Subsection (d) provides for third degree felony base penalty. Subsection (g) imprisonment penalty for misdemeanor, but language stated offense is felony grade.

§ 46.506. Civil Action by Attorney General.

(a) An action brought under this Subsection *shall* be commenced within two (2) years after the commission of the act.

(b) The Attorney General may institute a civil action against a person who violates § 46.503 to recover a civil penalty not to exceed:

(1) $25,000 per day of violation; or

(2) *not less than* Two Dollars ($2.00) nor more than Eight Dollars ($8.00) per commercial electronic mail message initiated in violation of § 46.503.

(3) For any violation of this Act, the amount determined under paragraph (b) may *not* exceed Two Million Dollars ($2,000,000).

(c) The Attorney General may seek an injunction in a civil action to prohibit a person who has engaged in or is engaged in a violation of § 46.503 from engaging in the violation.

(d) The Attorney General may enforce criminal violations of this Act.

CLRC COMMENT: No change.

§ 46.507. Lawfulness of Electronic Mail Service Provider Policies.

Nothing in this Act shall be construed to have any effect on the lawfulness of the adoption, implementation, or enforcement by an electronic mail service provider of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages under any other provision of law.

CLRC COMMENT: No change.

§ 46.508. 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.

CLRC COMMENT: No change.

ARTICLE 6

COMPUTER SPYWARE PROTECTION ACT

§ 46.601. Title.

This Act may be cited as the "Computer Spyware Protection Act."

CLRC COMMENT: No change

§ 46.602. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that spyware is a problem that adversely affects nearly every computer connected to the internet. Spyware is a catch-all term for computer programs that can track computer users' movements online. There are hundreds of programs that range from innocuous "ad-ware," which generates pop-up advertisements, to more dangerous programs that can record a user's keystrokes to gather personal information, such as credit card numbers and passwords, without their knowledge, and forward this information to another entity without the consumer's consent. Spyware is a serious problem that can create substantial privacy risks, increase the risk of identity theft, and cause serious degradation to personal and business computers that can cost millions of dollars in lost productivity.

It is the intent of *I Liheslatura* to protect owners and operators of computers on Guam from the use of spyware and malware that is deceptively or surreptitiously installed on the owner's or the operator's computer.

CLRC COMMENT: No change

§ 46.603. Definitions.

(a) *Cause to be copied* means to distribute or transfer computer software, or any component thereof. Such term *shall not* include providing:

(1) a transmission, routing, provision of intermediate temporary storage, or caching of software;

(2) a storage or hosting medium, such as a compact disk, website, or computer server through which the software was distributed by a third party; or

(3) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which the user of the computer located the software.

(b) *Computer software* means a sequence of instructions written in any programming language that is executed on a computer. Computer software *does not* include a data component of a web page that is *not* executable independently of the web page.

(c) *Computer virus* means a computer program or other set of instructions that is designed to degrade the performance of, or disable, a computer or computer network, and is designed to have the ability to replicate itself on other computers or computer networks without the authorization of the owners of those computers or computer networks.

(d) *Damage* means any significant impairment to the integrity or availability of data, software, a system, or information.

(e) *Execute*, when used with respect to computer software, means the performance of the functions or the carrying out of the instructions of the computer software.

(f) *Intentionally deceptive* means any of the following:

(1) an intentionally and materially false or fraudulent statement;

(2) a statement or description that intentionally omits or misrepresents material information in order to deceive an owner or operator of a computer;or

(3) an intentional and material failure to provide a notice to an owner or operator regarding the installation or execution of computer software for the purpose of deceiving the owner or operator.

(g) *Internet* means the global information system that is logically linked together by a globally unique address space based on the internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible

protocols, and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this Subsection.

(h) *Owner* or *operator* means the owner or lessee of a computer, or a person using such computer with the owner or lessee's authorization, but *does not* include a person who owned a computer prior to the first retail sale of the computer.

(i) *Message* means a graphical or text communication presented to an authorized user of a computer.

(j) *Person* means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(k) *Personally identifiable information* means any of the following information if it allows the entity holding the information to identify the owner or operator of a computer:

(1) the first name or first initial in combination with the last name;

(2) a home or other physical address including street name;

(3) a personal identification code in conjunction with a password required to access an identified account, other than a password, personal identification number or other identification number transmitted by an authorized user to the issuer of the account or its agent;

(4) a social security number, tax identification number, driver's license number, passport number, or any other government-issued identification number; or

(5) an account balance, overdraft history, or payment history that personally identifies an owner or operator of a computer.

CLRC COMMENT: No change

§ 46.604. Prohibitions, Use of Software.

It is unlawful for a person who is *not* an owner or operator of a computer to cause computer software to be copied on such computer knowingly or with conscious avoidance of actual knowledge or willfully, and to use such software to do any of the following:

(a) modify, through intentionally deceptive means, settings of a computer that control any of the following:

(1) the web page that appears when an owner or operator launches an internet browser or similar computer software used to access and navigate the internet;

(2) the default provider or web proxy that an owner or operator uses to access or search the internet; or

(3) an owner's or an operator's list of bookmarks used to access web pages;

(b) collect, through intentionally deceptive means, personally identifiable information through any of the following means:

(1) the use of a keystroke-logging function that records all or substantially all keystrokes made by an owner or operator of a computer and transfers that information from the computer to another person;

(2) in a manner that correlates personally identifiable information with data regarding all or substantially all of the websites visited by an owner or operator, other than websites operated by the person providing such software, if the computer software was installed in a manner designed to conceal from all authorized users of the computer the fact that the software is being installed;

(3) by extracting from the hard drive of an owner's or an operator's computer, an owner's or an operator's social security number, tax identification number, driver's license number, passport number, any other government-issued identification number, account balances, or overdraft history for a purpose unrelated to any of the purposes of the software or service described to an authorized user;

(c) prevent, through intentionally deceptive means, an owner's or an operator's reasonable efforts to block the installation of or execution of, or to disable, computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer without the authorization of an authorized user;

(d) intentionally misrepresent that computer software will be uninstalled or disabled by an owner's or an operator's action;

(e) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus computer software installed on an owner's or an operator's computer;

(f) enable use of an owner's or an operator's computer to do any of the following:

(1) accessing or using a modem or internet service for the purpose of causing damage to an owner's or an operator's computer, or causing an owner or operator, or a third party affected by such conduct to incur financial charges for a service that the owner or operator did not authorize;

(2) opening multiple, sequential, stand-alone messages in an owner's or an operator's computer without the authorization of an owner or operator, and with knowledge that a reasonable computer user could not close the messages without turning off the computer or closing the software application in which the messages appear; provided, that this Subsection *shall not* apply to communications originated by the computer's operating system, originated by a software application that the user chooses to activate, originated by a service provider that the user chooses to use, or presented for any of the purposes described in §46.606;

(3) transmitting or relaying commercial electronic mail or a computer virus from the computer, where the transmission or relaying is initiated by a person other than the authorized user and without the authorization of an authorized user;

(g) modify any of the following settings related the computer's access to, or use of, the internet:

(1) settings that protect information about an owner or operator for the purpose of taking personally identifiable information of the owner or operator;

(2) security settings for the purpose of causing damage to a computer; or

(3) settings that protect the computer from the uses identified in Subsection (f) of this Section.

(h) prevent, without the authorization of an owner or operator, an owner's or an operator's reasonable efforts to block the installation of, or to disable, computer software by doing any of the following:

(1) presenting the owner or operator with an option to decline installation of computer software with knowledge that, when the option is selected by the authorized user, the installation nevertheless proceeds;

(2) falsely representing that computer software has been disabled;

(3) requiring in an intentionally deceptive manner the user to access the internet to remove the software with knowledge or reckless disregard of the fact that the software frequently operates in a manner that prevents the user from accessing the internet;

(4) changing the name, location or other designation information of the software for the purpose of preventing an authorized user from locating the software to remove it;

(5) using randomized or intentionally deceptive filenames, directory folders, formats, or registry entries for the purpose of avoiding detection and removal of the software by an authorized user;

(6) causing the installation of software in a particular computer directory or computer memory for the purpose of evading authorized users' attempts to remove the software from the computer; or

(7) requiring, without the authority of the owner of the computer, that an authorized user obtain a special code or download software from a third party to uninstall the software.

CLRC COMMENT: No change.

§ 46.605. Other Prohibitions.

It is unlawful for a person who is *not* an owner or operator of a computer to do any of the following with regard to the computer:

(a) induce an owner or operator to install a computer software component onto the owner's or the operator's computer by intentionally misrepresenting that installing computer software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content; or

(b) using intentionally deceptive means to cause the execution of a computer software component with the intent of causing the computer to use such component in a manner that violates any other provision of this Article.

CLRC COMMENT: No change.

§ 46.606. Exceptions.

Sections 46.604 and 46.605 *shall not* apply to the monitoring of, or interaction with, an owner's or an operator's internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, network management, authorized updates of computer software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing computer software prescribed under this Article.

CLRC COMMENT: No change.

§ 46.607. Remedies.

(a) The Attorney General, an internet service provider or software company that expends resources in good faith assisting authorized users harmed by a violation of this Article, or a trademark owner whose mark is used to deceive authorized users in violation of this Article, may bring a civil action against a person who violates any provision of this Article to recover actual damages, liquidated damages of *at least* One Thousand Dollars ($1,000) per violation of this Article, not to exceed One Million Dollars ($1,000,000) for a pattern or practice of such violations, attorney fees, and costs.

(b) The court may increase a damage award to an amount equal to not more than three times the amount otherwise recoverable under subsection 1 if the court determines that the defendant committed the violation willfully and knowingly.

(c) The court may reduce liquidated damages recoverable under subsection 1, to a minimum of one hundred dollars, not to exceed one hundred thousand dollars for each violation if the court finds that the defendant established and implemented practices and procedures reasonably designed to prevent a violation of this Article.

(d) In the case of a violation of § 46.604(f)(1) that causes a telecommunications carrier or provider of voice over internet protocol service to incur costs for the origination, transport, or termination of a call triggered using the modem or internet-capable device of a customer of such telecommunications carrier or provider as a result of such violation, the telecommunications carrier may bring a civil action against the violator to recover any or all of the following:

(1) the charges such carrier or provider is obligated to pay to another carrier or to an information service provider as a result of the violation, including, but *not* limited to, charges for the origination, transport or termination of the call;

(2) costs of handling customer inquiries or complaints with respect to amounts billed for such calls;

(3) costs and a reasonable attorney's fee; and

(4) an order to enjoin the violation.

(e) For purposes of a civil action under Subsections (a), (b) and (c), any single action or conduct that violates more than one Subsection of this Article *shall* be considered multiple violations based on the number of such Subsections violated.

CLRC COMMENT: No change.

§ 46.608. Good Samaritan.

(a) No provider of computer software or of an interactive computer service may be held liable for identifying, naming, removing, disabling, or otherwise affecting a computer program through any action voluntarily undertaken, or service provided, where the provider:

(1) intends to identify accurately, prevent the installation or execution of, remove, or disable another computer program on a computer of a customer of such provider;

(2) reasonably believes the computer program exhibits behavior that violates this Act; and

(3) notifies the authorized user and obtains clear and conspicuous consent before undertaking such action or providing such service.

(b) A provider of computer software or interactive computer service is entitled to protection under this Section *only* if such provider:

(1) has established internal practices and procedures to evaluate computer programs reasonably designed to determine whether or not a computer program exhibits behavior that violates this Act; and

(2) has established a process for managing disputes and inquiries regarding misclassification or false positive identifications of computer programs. Nothing in this Section is intended to limit the ability of the Attorney General, or a District Attorney, to bring an action against a provider of computer software or of an interactive computer service.

CLRC COMMENT: No change.

CHAPTER 47

TRADEMARK COUNTERFEITING ACT

CLRC COMMENT: No change.

§ 47.10. Definitions.

For purposes of the Trademark Counterfeiting Act,

(a) the term '*registered mark*' means:

(1) a trademark or trade name registered in the United States and Trademark Office, or in any State, Commonwealth or Territory of the United States, or registered in Guam pursuant to §20401 *et. seq*. of Title 5, Guam Code Annotated, or in any other country, or protected by the *Amateur Sports Act of 1978*, 36 U.S.C. §380, or recognized by common law, whether or not the defendant knew such trademark or trade name was so registered or protected; and

(2) used without the consent of the registrant;

(b) the term '*counterfeit mark*' means:

(1) a spurious mark,

(i) that is used in connection with trafficking goods or services;

(ii) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office or registered with the Administrator of the Guam Economic Development and Commerce Authority ('GEDCA') and with the Department of Revenue and Taxation of the government of Guam, or in any other State, Commonwealth or Territory of the United States, whether or not the defendant knew such mark was so registered; and

(iii) the use of which is likely to cause confusion, to cause mistake, or to deceive; or

(2) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the *Lanham Act* are made available, but such term does not include any mark or designation used in connection with goods or services of which the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

(c) the term '*traffic*' means to transport, transfer, or otherwise dispose of, to another, in consideration for anything of value, or to make or obtain control of, with the intent to transport, transfer, or dispose of;

(d) the term '*Lanham Act*' means the Act entitled '*An Act To Provide For The Registration And Protection Of Trademarks Used In Commerce, To Carry Out The Provisions Of Certain International Conventions, And For Other Purposes*,' approved July 5, 1946 (15 U.S.C. §1051 *et. seq.);*

(e) the term *'cumulative retail sale value'* of counterfeit goods or services means a value equivalent to the cumulative price or fair market value of the article as of the time of the crime.

CLRC COMMENT: No change.

§ 47.20. Counterfeiting of Registered Trademarks.

Whoever intentionally and knowingly reproduces, counterfeits, copies, or colorably imitates a registered mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements, to be specifically used in commerce upon, or in connection with the sale, offering for sale, distribution, or advertising of goods or services or in connection with such use, shall be guilty of the crime of counterfeiting. The crime of counterfeiting shall be punishable as follows:

(a) Misdemeanor. A person shall be convicted of a misdemeanor if the goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant

intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of Five Hundred Dollars ($500) or less.

(b) Third Degree Felony. A person shall be convicted of a third degree felony if the goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value in excess of Five Hundred Dollars ($500) but less than One-Thousand Five Hundred Dollars ($1,500).

(c) Second Degree Felony. A person shall be convicted of a second degree felony if the goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of One Thousand Five Hundred Dollars ($1,500) or more.

CLRC COMMENT: No change.

§ 47.30. Trafficking of Counterfeit Goods.

Whoever intentionally and knowingly transports, transfers, or otherwise disposes of counterfeit goods to another, in consideration for anything of value, or makes or obtains control of counterfeit goods with intent to transport, transfer, or dispose of such goods, shall be guilty of the crime of trafficking of counterfeit goods. Goods bearing a counterfeit mark in the possession of a person who intends personal use and not resale are permitted. The crime of trafficking of counterfeit goods shall be punishable as follows:

(a) Misdemeanor. A person shall be found guilty of a misdemeanor if the trafficked goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of Five Hundred Dollars ($500) or less.

(b) Third Degree Felony. A person shall be guilty of a third degree felony if the trafficked goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value in excess of Five Hundred Dollars ($500) but less than One Thousand Five Hundred Dollars ($1,500).

(c) Second Degree Felony. A person shall be guilty of a second degree felony if the trafficked goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of One Thousand Five Hundred Dollars ($1,500) or more.

CLRC COMMENT: No change.

§ 47.40. Aiding and Abetting the Trafficking of Counterfeit Goods.

A person is guilty of aiding or abetting the trafficking of counterfeit goods who:

(a) solicits a person to purchase counterfeit goods; or

(b) knowingly and for the purpose of trafficking of counterfeit goods, transports any person into, out of or within Guam, or who procures or pays for the transportation of any person into, out of or within Guam for the purpose of trafficking counterfeit goods.

CLRC COMMENT: No change.

§ 47.50. Defenses, Affirmative Defenses, and Limitations on Remedies.

All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the *Lanham Act*, (15 U.S.C. §1051 *et seq.*), shall be applicable in a prosecution under this Chapter.

CLRC COMMENT: No change.

§ 47.60. Enforcement.

(a) Except as otherwise provided in this Chapter, any goods to which a forged or counterfeit trademark or service mark is attached or affixed, or any tools or other reproduction materials for the reproduction of any specific forged or counterfeit trademark or service mark, which are produced or possessed in violation of this Chapter shall be seized by any law enforcement officer. Upon a determination by a preponderance of the evidence that any articles in the possession of the

defendant in a prosecution under this Chapter bears a counterfeit mark, the Attorney General may obtain an order from the Court for the destruction of the counterfeit goods, unless the owner of the registered or protected trademark or service mark which has been forged or counterfeit approves a different disposition.

(b) Any personal property, including, but not limited to, cash, currency or monies received by or in connection with a violation of this Chapter, or any item, object, tool, machine, or vehicle of any kind, employed as an instrumentality in the commission of, or in aiding or abetting in the commission of the crime counterfeiting, trafficking in counterfeit goods, or any other violation of this Chapter, may be seized and is subject to forfeiture by the Courts of Guam.

CLRC COMMENT: No change.

§ 47.70. Restitution.

In addition to any punishment ordered under §§ 47.20, 47.30 and 47.40, the Court shall order any person found in violation of this Chapter to make restitution to the government of Guam or to the Customs and Quarantine Agency, as the case may be, for the cost of storage and destruction of the counterfeit or forged goods. Such person shall be jointly and severally liable for any restitution.

CLRC COMMENT: No change.

§ 47.80. Protection for Landlords.

No owner, officer, employee, or agent who provides, rents, leases, licenses, or sells real property upon which a violation of § 47.20 or § 47.30 occurs, and who is charged with a violation of § 47.40, shall be subject to criminal penalty under this Chapter unless he or she is proven to have actual knowledge that the mark is counterfeit and is either a principal to the offense or an accessory.

CLRC COMMENT: No change.

CHAPTER 48

NOTIFICATION OF BREACHES OF PERSONAL INFORMATION

§ 48.10. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that both public and private entities on Guam have a duty to safeguard personal information that, *if* stolen *or* publicized, may result in crimes such as fraud and identity theft. The anonymity of the global internet, that transcends the borders of sovereign nations, makes it possible for unscrupulous individuals to profit from the theft of personal information and never be brought to justice for their crimes *or* made to pay restitution. Therefore, it is incumbent upon all entities that are entrusted with such data to maintain strong security systems to ensure that the personal information will always be protected.

It is the intent of *I Liheslatura* to ensure that the personal information of the residents of Guam is protected, by providing procedures for notification of security breaches related to personal information and thereby encouraging individuals and commercial entities, as defined by public law, to provide reasonable security for unencrypted personal information.

CLRC COMMENT: No change.

§ 48.20. Definitions.

As used in this Chapter:

(a) *Breach of the security of a system* means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security *or* confidentiality of personal information maintained by an individual *or* entity as part of a database of personal information regarding multiple individuals and that causes, *or* the individual *or* entity reasonably believes has caused *or* will cause, identity theft *or* other fraud to any resident of Guam.

Good faith acquisition of personal information by an employee *or* agent of an individual *or* entity for the purposes of the individual *or* the entity is *not* a breach of the security of the system, provided, that the personal information is *not* used for a purpose other than a lawful purpose of the individual *or* entity *or* subject to further unauthorized disclosure.

(b) *Entity* includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, *or* instrumentalities, *or* any other legal entity, whether for profit *or* not-for-profit.

(c) *Encrypted* means transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process *or* key, *or* securing the information by another method that renders the data elements unreadable *or* unusable.

(d) *Financial institution* has the meaning given that term in Section 6809(3) of Title 15, United States Code.

(e) *Individual* means a natural person.

(f) *Personal information* means the first name, *or* first initial, and last name in combination with and linked to any one *or* more of the following data elements that relate to a resident of Guam, when the data elements are *neither* encrypted *nor* redacted:

(1) Social Security number;

(2) Driver's license number *or* Guam identification card number issued in lieu of a driver's license; *or*

(3) Financial account number, *or* credit card *or* debit card number, in combination with any required security code, access code, *or* password that would permit access to a resident's financial accounts.

(4) The term *does not* include information that is lawfully obtained from publicly available information, *or* from Federal, State, *or* local government records lawfully made available to the general public.

(g) *Notice* means:

(1) Written notice to the postal address in the records of the individual *or* entity;

(2) Telephone notice;

(3) Electronic notice*; or*

(4) Substitute notice, *if* the individual *or* the entity required to provide notice demonstrates that the cost of providing notice will *exceed* Ten Thousand Dollars ($10,000), *or* that the affected class of residents to be notified *exceeds* five thousand (5,000) persons, or that the individual or the entity does *not* have sufficient contact information *or* consent to provide notice as described in paragraphs 1, 2, *or* 3. Substitute notice consists of any two (2) of the following:

(A) E-mail notice *if* the individual *or* the entity has e-mail addresses for the members of the affected class of residents;

(B) Conspicuous posting of the notice on the Website of the individual *or* the entity, *if* the individual *or* the commercial entity maintains a Website; and

(C) Notice to major Guam media.

(h) *Redact* means alteration *or* truncation of data such that *no more than* the following are accessible as part of the personal information:

(1) five (5) digits of a Social Security Number, *or*

(2) The last four (4) digits of a driver's license number, Guam identification card number *or* financial account number.

CLRC COMMENT: No change.

§ 48.30. Disclosure of Breach of Security of Computerized Personal Information by an Individual *or* Entity.

(a) General Rule. An individual *or* entity that owns *or* licenses computerized data that includes personal information *shall* disclose any breach of the security of the system following discovery *or* notification of the breach of the security of the system to any resident of Guam whose unencrypted and unredacted personal information was *or* is reasonably believed to have been accessed and acquired by an unauthorized person and that causes, *or* the individual *or* entity reasonably believes has caused *or* will cause, identity theft *or* other fraud to any resident of Guam. *Except* as provided in subsection (d) of this Section, o*r* in order to take any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the system, the disclosure *shall* be made without unreasonable delay.

(b) Encrypted Information. An individual *or* entity must disclose the breach of the security of the system *if* encrypted information is accessed and acquired in an unencrypted form, *or if* the security breach involves a person with access to the encryption key and the individual *or* entity reasonably believes that such breach has caused *or* will cause identity theft *or* other fraud to any resident of Guam.

(c) An individual *or* entity that maintains computerized data that includes personal information that the individual *or* entity *does not* own or license *shall* notify the owner *or* licensee of the information of any breach of the security of the system as soon as practicable following discovery, *if* the personal information was, *or* if the entity reasonably believes was, accessed and acquired by an unauthorized person.

(d) Notice required by this Section may be delayed *if* a law enforcement agency determines and advises the individual *or* entity that the notice will impede a criminal *or* civil investigation, *or* homeland *or* national security. Notice required by this Section must be made without unreasonable delay after the law enforcement agency determines that notification will no longer impede the investigation *or* jeopardize national *or* homeland security.

CLRC COMMENT: No change.

§ 48.40. Procedures Deemed in Compliance with Security Breach Requirements.

(a) Information Privacy *or* Security Policy. An entity that maintains its own notification procedures as part of an information privacy *or* security policy for the treatment of personal information and that are consistent with the timing requirements of this Chapter *shall* be deemed to be in compliance with the notification requirements of this Chapter *if* it notifies residents of Guam in accordance with its procedures in the event of a breach of security of the system.

(b) Compliance with Federal requirements.

(1) A financial institution that complies with the notification requirements prescribed by the Federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice is deemed to be in compliance with this Chapter.

(2) An entity that complies with the notification requirements *or* procedures pursuant to the rules, regulations, procedures, *or* guidelines established by the entity's primary *or* functional Federal regulator *shall* be in compliance with this Chapter.

CLRC COMMENT: No change.

§ 48.50. Violations.

(a) A violation of this Chapter that results in injury *or* loss to residents of Guam may be enforced by the Office of the Attorney General.

(b) *Except* as provided by § 48.40 of this Chapter, the Office of the Attorney General *shall* have exclusive authority to bring action and may obtain either actual damages for a violation of this Chapter *or* a civil penalty *not to exceed* One Hundred Fifty Thousand Dollars ($150,000) per breach of the security of the system *or* series of breaches of a similar nature that are discovered in a single investigation.

CLRC COMMENT: No change.

§ 48.60. Applicability.

This Chapter *shall* apply to the discovery *or* notification of a breach of the security of the system that occurs on *or* after the effective date of this Chapter.

CLRC COMMENT: No change.

§ 48.70. Effective Date.

This Chapter *shall* take effect one hundred twenty (120) days after the date of enactment.

CLRC COMMENT: No change.

§ 48.80. Preemption.

This Chapter deals with subject matter that is of island-wide concern, and it is the intent of *I Liheslatura* that this Chapter *shall* supersede and preempt all rules and regulations regarding the matters expressly set forth in this Chapter.

CLRC COMMENT: No change.

CHAPTER 52

PERJURY AND OFFENSE AGAINST THE INTEGRITY OF OFFICIAL PROCEEDINGS

§ 52.10. Definitions.

As used in this Chapter:

~~(a) *official function* and *public servant* have the meanings provided for those terms by § 49.10.~~

(~~b~~a) *material statement* means a statement which affected or could have affected the course or outcome of a proceeding, regardless of its admissibility under rules of evidence.

(b) *official function* means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.

(c) *official proceeding* means a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer an oath or cause it to be administered, including any referee, hearing officer, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

~~(d) *public record* means any record, document, thing belonging to, or received or kept by the Government of Guam or any governmental instrumentality within the Territory.~~

(d) *public servant* means any officer, member, or employee of the legislative, executive, or judicial branches of Guam or of any governmental instrumentality within Guam, any juror, any persons exercising the functions of any such position, or any referee, arbitrator, hearing officer, or other person authorized by law to hear or determine any question or controversy. It includes a person who has been elected, appointed or designated to become a public servant, and, in the case of a juror, a person who has been drawn, empaneled, or designated to attend as a prospective grand or petit juror.

(e) *statement* means any ~~non-trivial~~ representation, but includes a representation of opinion, belief or other state of mind ~~is a statement~~ only if it clearly relates to a state of mind apart from or in addition to the facts which it otherwise represents.

(f) *statement under oath* means

(1) a statement made pursuant to a swearing, an affirmation, or any other mode authorized by law of attesting to the truth of that which is stated; and

(2) a statement made on a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

~~(3) testimony means oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.~~

(g) *testimony* means oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.

CLRC COMMENT: For clarification of the section, subsection (a) definitions of "official function" and "public servant" in are inserted directly into this section from § 49.10. Subsection (d) definition of "public record" in is stricken as the term is not used in this chapter. Subsection (e) term "non-trivial" is stricken as it creates a potential conflict with "statement" as used in § 52.15 (Perjury) and § 52.20 (False Statement Under Oath); other amendents are for consistency with source MPC § 241.0 (Definition of Statement). Subsection (f)(3) definition of "testimony" is erroneously placed and is renumbered as a new subsection.

§ 52.15. Perjury; Defined & Punished.

(a) A person is guilty of perjury if, under oath in an official proceeding, he makes a false statement which is material and which he does not believe to be true.

(b) Whether a statement is material is a question of law.

(c) Perjury is a felony of the third degree.

CLRC COMMENT: No change.

§ 52.20. False Statement Under Oath; Defined & Punished.

A person is guilty of a misdemeanor if he makes a false statement under oath which he does not believe to be true and:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is intended to mislead a public servant in performing his official function.

CLRC COMMENT: No change.

§ 52.25. Unavailability of Certain Defenses.

It is not a defense to any offense defined in § 52.15 or § 52.20 that:

(a) the oath was administered or taken in an irregular manner;

(b) the authority or jurisdiction of the person administering the oath was defective, if the defect was excusable under any statute or rule of law;

(c) the statement was subject to a proper objection, whether or not such objection was made; or

(d) the defendant mistakenly believed the falsification to be immaterial, where materiality of the statement is an element of the offense.

CLRC COMMENT: No change.

§ 52.30. Unsworn Falsifications; Defined & Punished.

A person is guilty of a misdemeanor if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

(a) any ~~written~~ false statement, in written or electronic format, ~~of his own~~ which he does not then believe to be true; or

(b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

CLRC COMMENT: Amendments are for consistency with source MPC § 241.3 (Unsworn Falsification to Authorities) and to update the section to include electronic statements.

§ 52.40. Intimidation of Witnesses by Extortion; Defined & Punished.

A person is guilty of a felony of the third degree if, by any threat which would constitute a means of committing the offense of theft by extortion under this Code if such threat were employed to obtain property, he:

(a) attempts to induce any person to refrain from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; or

(b) attempts to induce any person who has been or may be properly called as a witness in any official proceeding to give false testimony in, to withhold testimony or information from, or to fail to attend, any such proceeding.

CLRC COMMENT: No change. However, 9 GCA § 43.40 (Theft by Threatening) and § 49.50 (Unlawful Influence by Extortion) will be added to cross-reference comment.

§ 52.45. Witness Bribery: Solicitation: Definitions; Punishment; Affirmative Defenses.

A person is guilty of a felony of the third degree if he:

(a) offers, confers upon, or agrees to confer upon, any person any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to any offense; provided that it is an affirmative defense to a prosecution under this Subsection that the benefit was honestly offered or conferred as restitution or indemnification for harm done in the circumstances of the offense;

(b) offers, confers upon, or agrees to confer upon, any person who has been or may be properly called as a witness in an official proceeding any benefit as consideration for giving false testimony or information, for withholding testimony or information from, or for failing to attend, any such official proceeding;

(c) solicits, accepts or agrees to accept any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information, relating to an offense;

provided that it is an affirmative defense to a prosecution under this Subsection that the benefit was honestly claimed as restitution or indemnification for harm done in the circumstances of the offense; or

(d) solicits, accepts or agrees to accept, in connection with any official proceeding to which he has been or may be properly called as a witness, any benefit as consideration for giving false testimony or information in, for withholding testimony or information from, or for failing to attend, any such official proceeding.

CLRC COMMENT: No change.

§ 52.50. Tampering with Witnesses: Defined and Punished.

A person is guilty of a misdemeanor if he attempts to induce any person to give false testimony in or to withhold testimony from any official proceeding to which he has been or may be properly called as a witness, or to fail to attend any official proceeding to which he has been lawfully called as a witness.

CLRC COMMENT: No change.

§ 52.55. Falsifying Evidence; Defined & Punished.

A person is guilty of a ~~felony of the third degree~~ misdemeanor if, believing that an official proceeding has been or is about to be instituted, he prepares, offers in evidence or uses any record, document or thing in any form, including written or electronic format, knowing it to be false and with intent to mislead a public servant who is or may be engaged in the proceeding.

CLRC COMMENT: Amendment reduces the offense level to a misdemanor. Felony level in this section is inconsistent with source MPC § 241.7 (Tampering with or Fabricating Physical Evidence), which is a misdemeanor, and is inconsistent with § 52.60 (Destroying Evidence), which is a misdemeanor. The other amendment updates the section to include electronic form of evidence.

§ 52.60. Destroying Evidence; Defined & Punished.

A person is guilty of a misdemeanor if, believing that an official proceeding has been or is about to be instituted, he destroys, conceals or removes any record, document or thing in any form, including written or electronic format, with intent to impair its availability in the proceeding.

CLRC COMMENT: Amendment updates the section to include electronic format.

§ 52.65. Unlawful Communication With Jurors; Defined & Punished.

A person is guilty of a misdemeanor if, with intent to influence the outcome of an official proceeding, he communicates with a juror, except as may be authorized by law.

CLRC COMMENT: No change.

CHAPTER 55

INTERFERENCE WITH GOVERNMENT OPERATIONS AND LAW ENFORCEMENT

§ 55.10. Tampering With Public Records; Defined & Punished.

(a) Public record means any record, document or thing in any form, including written or electronic format, belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government.

(~~a~~b) A person commits ~~an~~ the offense of tampering with public records if he:

(1) knowingly makes a false entry in, or false alteration of a public record ~~any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government~~;

(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in ~~Paragraph (1)~~ Subsection (a); or

(3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of a public record ~~any such record, document or thing~~.

(~~b~~c) An offense under this Section is a misdemeanor unless the defendant's intent is to defraud or injure anyone, in which case the offense is a felony of the third degree.

CLRC COMMENT: Amendments provide a clearer definition of "public record" and update the section to include electronic form.

§ 55.15. Hindering Apprehension or Prosecution; Defined & Punished.

(a) A person is guilty of the offense of hindering apprehension or prosecution if, with intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of an offense, he:

(1) harbors or conceals the other person;

(2) provides or aids in providing a weapon, transportation, disguise or other means of avoiding discovery or apprehension;

(3) conceals, alters or destroys ~~and~~ any physical evidence that might aid in the discovery, apprehension or conviction of such person;

(4) warns such person of impending discovery or apprehension, except that this Paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;

(5) obstructs by force, intimidation or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person; or

(6) aids such person to safeguard the proceeds of or to profit from such offense.

(b) Hindering apprehension or prosecution is a felony of the third degree if the defendant knows that the charge made or liable to be made against the other person is a felony of the first or second degree. Otherwise the offense is a misdemeanor.

CLRC COMMENT: Amendments are for clarification and correction.

§ 55.20. False Alarms; Defined & Punished.

(a) A person is guilty of a misdemeanor when, with knowledge of its falsity, he causes a false alarm of fire or other emergency to be transmitted to any organization that responds to emergencies involving danger to life or property.

(b) A person is guilty of a misdemeanor when, with knowledge of its falsity, he initiates or circulates a false alarm of fire or other emergency knowing that the alarm is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm.

(c) A person is guilty of a felony of the third degree if the false alarm involves a report or warning of an impending bombing, hostage situation, person armed with a deadly weapon as defined by 9 GCA § 16.10, or any other incident that elicits an immediate or heightened response by law enforcement or emergency services.

CLRC COMMENT: New subsection (b) adds a new misdemeanor offense. New subsection (c) adds a new felony offense. Amendments update, broaden and strengthen prohibitions against false alarms. Reference N.J. § 2C: 33-3 (False public alarms).

§ 55.25. Making False Reports; Defined & Punished.

(a) A person commits a ~~misdemeanor~~ felony of the third degree who~~: (a)~~ knowingly gives false information to any ~~law enforcement~~ peace officer with intent to induce such officer to believe that another person has committed an offense~~;~~.

(b) A person commits a misdemeanor who:

(1) reports to ~~law enforcement authorities~~ any peace officer an offense or other incident within their concern knowing that it did not occur, or

~~(c)~~(2) makes a report which purports to furnish ~~law enforcement authorities~~ any peace officer with information relating to an offense or incident when he knows that he has no such information.

CLRC COMMENT: Guam's "swatting" law. Subsection (a) amendment elevates false reporting of a criminal offense by another person to a felony to update and strengthen this prohibition. Reference N.J. 2C:28-4 (Falsely incriminating another). The offenses are kept as misdemeanors. Other amendments replace law enforcement officer or authority with peace officer for consistency within this chapter.

§ 55.30. Impersonating a Public ~~Officer~~Servant or Peace Officer; Defined & Punished.

(a) A person commits a misdemeanor if he falsely pretends to hold a position in the public service with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(b) A person commits a felony of the third degree if he falsely pretends to hold a position as a peace officer or member or employee or agent of any organization or association of peace officers with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

CLRC COMMENT: New subsection (b) adds impersonation of a peace officer as a separate felony level offense to update and strengthen this prohibition. Reference NJ § 2C:28-8 (Impersonating a public servant or law enforcement officer).

§ 55.35. Resisting Arrest of Self or Others; Defined & Punished.

A person is guilty of a misdemeanor when, with intent to prevent or delay the arrest of himself of another person by one whom he knows or reasonably should know to be a peace officer acting in an official capacity, he prevents or delays that arrest by the use or threat of force or by physical obstruction. For purposes of this Section, a peace officer shall include apprehending officers designated under Article 2 of 10 GCA Chapter 51, as well as peace officers as defined under ~~9 GCA § 1.70~~ 8 GCA § 5.55.

CLRC COMMENT. Amendment provides clarification as 9 GCA § 1.70 directly references 8 GCA § 5.55.

§ 55.40. Disarming of a Peace Officer; Defined & Punished.

(a) A person commits the ~~crime~~ offense of disarming a peace officer, as defined by 17 GCA § 51101 if such person intentionally:

(1) removes, or attempts to remove, a firearm, deadly weapon, or less-lethal weapon, including any blunt impact, chemical, or conducted energy device, used in the performance of his or her official duties from the person of a peace officer while said officer is acting within the scope of his or her official duties; or

(2) deprives, or attempts to deprive, a peace officer of said officer's use of a firearm, deadly weapon, or any other equipment described in Subsection (a)(1) of this Section while the officer is acting within the scope of his or her official duties.

(b) The provisions of this Section *shall not* apply when:

(1) the defendant does not know or could not reasonably have known that the person he or she disarmed was a peace officer; or

(2) the peace officer was engaged in an incident involving felonious conduct by the peace officer at the time the defendant disarmed said officer.

(c) An offense under this Section is a felony of the third degree, unless the defendant's intent is to injure anyone, in which case the offense is a felony of the second degree.

CLRC COMMENT: Amendment using "offense" is for consistency with (c).

§ 55.45. Obstructing Governmental Functions; Defined & Punished.

A person commits a misdemeanor if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

CLRC COMMENT. No change.

§ 55.50. Damaging, Stealing or Receiving Stolen Government Generators, Telephones, or Emergency or Utility Equipment.

A person commits a felony in the second degree if he intentionally damages or steals any generator, power pole, power line, telephone, telephone line, telephone facility, water meter, or other emergency or utility equipment or vehicle owned or installed by the government of Guam, its agencies or instrumentalities.

CLRC COMMENT: Amendment adds "vehicle" for clarification and certainty.

§ 55.51. Receiving Stolen Government Generators, Telephones or Emergency Utility Equipment.

A person commits a felony in the second degree if he receives any stolen generator, power pole, power line, telephone, telephone line, telephone facility, water meter, or other emergency or utility equipment or vehicle owned or installed by the government of Guam, its agencies or instrumentalities, knowing such item is stolen.

CLRC COMMENT: Amendment adds "vehicle" for clarification and certainty.

§ 55.60. Public Water, Unlawful Use During Period of Emergency.

(a) Upon the declaration by the Governor of a state of emergency as the result of a disaster that threatens the public water supply, it shall be a petty misdemeanor for any person to use water supplied by the ~~Public Utility Agency of Guam~~ Guam Waterworks Authority for any unauthorized use.

(b) During a state of emergency public water is authorized to be used for purposes of public health, safety and welfare. Any use of the public water during a state of emergency for a use not pertaining to public health, safety and welfare shall not be authorized. Such unauthorized uses shall include, but not be limited to, washing motor vehicles, windows, streets, sidewalks and buildings or irrigating or watering ornamental plants, shrubs, flower, lawns or golf courses.

(c) In addition to any other penalty imposed by the court upon conviction under this section, a conviction arising from unauthorized use of water for a business or commercial purpose shall be punished by a fine of not less than One Thousand Dollars ($1,000) nor more than Twenty-Five Thousand Dollars ($25,000).

(d) No state of emergency proclaimed by the Governor shall be for a period of more than fifteen (15) days. The Governor may proclaim successive states of emergency if he deems such proclamation to be in the public interest.

CLRC COMMENT: Public Utility Agency of Guam is now Guam Waterworks Authority.

§ 55.65. Failure to File a Complete Partial-Birth Abortion and Abortion Report.

A person commits a misdemeanor who knowingly fails to file a complete individual abortion report for each abortion with the Territorial Registrar of Vital Statistics within seven (7) days from the date of the abortion.

CLRC COMMENT: No change.

CHAPTER 70

MISCELLANEOUS CRIMES

ARTICLE 1

PROTECTING ANIMAL WELFARE AND SAFETY (PAWS) ACT (PUGUA'S LAW)

§ 70.10. Title.

Sections 70.10 through 70.85 of this Article may be cited as the *Protecting Animal Welfare and Safety (PAWS) Act* or *Pugua's Law.*

CLRC COMMENT: No change.

§ 70.15. Definitions.

For the purposes of §§ 70.10 through 70.85 of this Article:

(a) *Animal* means any nonhuman mammal, bird, reptile, amphibian, or fish, and is inclusive of, but not limited to, livestock and domestic animals.

(b) *Caregiving agency* means an animal shelter, humane society, or other animal care agency that has as its principal purpose the humane treatment of animals, and that has temporary custody of an animal after the animal has been seized.

(c) *Domestic animal* means any animal, other than livestock, that is owned by a person or in a person's possession.

(d) *Good animal husbandry* includes, but is not limited to, the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, or the ear cropping and tail docking of dogs, according to accepted practices of veterinary medicine or animal husbandry.

(e) *Guardian* means a person who has possession, title, ownership interest, or other legal interest in an animal.

(f) *Livestock* means cattle, carabao, swine, deer, sheep, goats, equine, and poultry raised for labor, food, or other purposes.

(g) *Minimum care* means care reasonably sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the guardian, includes, but is not limited to, the following requirements:

(1) open or adequate access to food of reasonable quantity and quality to allow for normal growth or maintenance of body weight;

(2) open or adequate access to potable water of reasonable quality and quantity to satisfy the animal's needs;

(3) access to a structure reasonably sufficient to protect the animal from wind, rain, sun, or other environmental or weather conditions;

(4) veterinary and other care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect, or disease;

(5) for a domestic animal, continuous access to an area:

(A) with reasonably adequate space for exercise necessary for the health of the animal;

(B) with air temperature reasonably suitable for the health of the domestic animal;

(C) with adequate ventilation;

(D) with regular diurnal lighting cycles of either natural or artificial light; and

(E) kept reasonably clean and free from excess waste or other contaminants that could affect the health of the animal(s).

(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.~~

(i) *Person* means an individual, corporation, trust, partnership, association, or any other legal entity.

(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~~.

(k) *Physical trauma* means fractures, cuts, punctures, bruises, burns, or other wounds.

(l) *Possession* means to have physical custody or to exercise dominion with intent of ownership or control over an animal.

(m) *Serious physical injury* means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of a limb, body part, or bodily organ.

(n) *Torture* means an action taken with the intent of inflicting or prolonging pain or suffering.

(o) *Suffering* means fear, agitation, severe depression or stress, or other forms of severe emotional or mental distress.

CLRC COMMENT: Subsection (h) removal of restriction on who may authorize an officer. Subsection (j) removal of injuries difficult to prove. No other subsections amended.

§ 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 an offense punishable by a fine of not more than Five Hundred Dollars ($500) per offense~~ a violation.

(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 (Disposition of Offenders).

§ 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.

§ 70.30. Aggravated Animal Abuse.

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

(1) tortures an animal; or

(2) causes the death of an animal under circumstances demonstrating malice aforethought.

(b) Aggravated Animal Abuse is a second degree felony.

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

CLRC COMMENT: No change.

§ 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.

(e) Nothing in this Section shall constitute a prohibition or ban on the possession, lawful importation/exportation, breeding, or selling of any breed of dog.

(f) Veterinarians and/or physicians and/or health professionals are required to report suspected animal fighting incidents, excluding cockfighting as authorized by law, that come to their attention through the provision of medical services to an animal to the Guam Police Department within five (5) days of learning of animal fighting incidents. Failure to do so shall result in potential loss of licensure if deemed appropriate by the appropriate licensure agencies. Any veterinarians, physicians, or health professionals making a report under this Subsection shall be immune from any civil or criminal liability by reason of making the report, unless the report was made in bad faith.

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.

§ 70.40. Sexual Assault of an Animal.

(a) A person commits the crime of Sexual Assault of an Animal if the person knowingly:

(1) touches or contacts, or causes an object or another person to touch or contact, the mouth, anus, or sex organs of an animal or animal carcass for the purpose of arousing or gratifying the sexual desire of a person; or

(2) causes an animal or animal carcass to touch or contact, the mouth, anus, or sex organs of a person for the purpose of arousing or gratifying the sexual desire of a person.

(b) Sexual Assault of an Animal is a third degree felony.

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

CLRC COMMENT: No change.

§ 70.45. Bodily Alterations, Disablements, or Removals.

(a) It is unlawful for any person to remove or permanently alter or disable, or cause or procure to be removed or permanently altered or disabled, any part or organ, or the function of any part or organ, of an animal, except as necessary for proper and lawful veterinary care, population control, or good animal husbandry; provided, that population control or good animal husbandry is under the supervision or instruction of a licensed veterinarian, and:

(1) all surgical procedures must be performed or supervised by a licensed veterinarian in accordance with the American Veterinarian Medical Association policy, and the veterinarian shall counsel pet owners about the matter before agreeing to perform these surgeries and shall record said consultation in the pet's record; and

(2) any person performing procedures for population control of livestock or good animal husbandry for livestock may do so without direct supervision of a licensed veterinarian; provided, that said person has been properly trained by a licensed veterinarian and properly conducts said procedures in accordance with generally accepted industry standards.

(b) A violation of Subsection (a) of this Section is a misdemeanor.

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

CLRC COMMENT: No change.

§ 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 (Disposition of Offenders).

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

~~(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.

§ 70.60. Leaving Animals Unattended in Motor Vehicles; Penalty; Authority of Officers.

(a) For the purposes of this Section:

(1) *Vehicle* means a car, truck, camper, trailer, or other form of transportation in which an animal can be transported.

(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.

(b) A person shall not confine an animal in a vehicle in a manner that could reasonably be expected to threaten the health, safety, and well-being of the animal due to conditions that include, but are not limited to, extreme temperatures, lack of adequate ventilation, lack of food or water, or confinement with a vicious or dangerous animal, or other circumstances that could reasonably be expected to cause suffering, disability, physical injury, or death to the animal.

(c) After making reasonable efforts to locate the vehicle's owner, an animal control officer, peace officer, law enforcement officer, or firefighter may enter a vehicle by any reasonable means to protect the health, safety and well-being of an animal who is endangered by confinement in a vehicle. A peace officer, law enforcement officer, animal control officer, or firefighter may enter the vehicle for the sole purpose of assisting the animal and may not search the vehicle or seize items found in the vehicle unless otherwise permitted by law.

(d) An animal control officer, peace officer, law enforcement officer, or firefighter who removes or otherwise retrieves an animal under this Section shall:

(1) leave written notice in a secure and conspicuous location on or in the vehicle bearing the officer's or firefighter's name and title, and the address of the location where the animal may be retrieved; and

(2) take the animal to a veterinary clinic or animal shelter for a health screening and treatment.

(e) An animal control officer, peace officer, law enforcement officer, or firefighter who removes or otherwise retrieves an animal from a vehicle under this Section shall be immune from criminal or civil liability that might otherwise result from the removal.

(f) Penalties.

(1) A person in violation of Subsection (b) of this Section shall be subject to a fine of not more than Five Hundred Dollars ($500).

(2) The owner may retrieve the animal removed by an officer or firefighter only after payment of all charges that have accrued for the maintenance, care, medical treatment, and impoundment of the animal.

CLRC COMMENT: Unnecessary language removed from subsection (a)(2). No other subsections amended.

§ 70.65. Defenses; Exceptions.

(a) It is an affirmative defense in a prosecution for violation of animal abuse under § 70.25 (a) of this Article if:

(1) the defendant reasonably and humanely caused the death of the animal to end its immediate and intractable suffering; or

(2) the animal posed a present and immediate danger to the safety of people, and the defendant took reasonable measures necessary to protect against serious bodily harm, or death, to themselves or other people, livestock, or domestic animals.

(b) Ownership shall not be a defense.

(c) Guardianship shall not be a defense.

(d) Trespass by an animal shall not be a defense.

(e) Corporations and other nonhuman legal entities may be concurrently charged for acts in violation of any animal protection offense committed by their employees or agents when the act is committed in the normal course and scope of the employment or agency.

(f) It is no defense to the crime of animal abandonment that the defendant abandoned the animal at or near an animal shelter, veterinary clinic, or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

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

(1) the proper shooting or taking of game in such manner and at such times as is allowed or provided by the laws of Guam;

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

(~~3~~2) the proper killing of animals used for food~~, except for dogs and cats, in accordance~~ with the law;

(4) the proper disinfestation of rodents and brown tree snakes;

(5) animals properly used for education or research purposes by, or under the oversight of, the Guam Community College or the University of Guam; provided, that proper Institutional Review Board procedures and all applicable local and federal laws are followed;

(6) euthanasia as properly conducted by a licensed veterinarian, or individual authorized by § 70.70 of this Article, and done in accordance with local law and generally accepted industry practice;

(7) the proper disinfestation of animals deemed a disease vector and threat to public health by the Department of Public and Social Services; provided, that disinfestation is done in accordance with established procedures approved by said Department;

(8) the proper disinfestation of species deemed invasive to Guam by the Guam Invasive Species Council; provided, that disinfestation is done in accordance with established procedures approved by said Council.

(A) Subsection (g)(8) of this Section shall not pertain to cats or dogs, except as authorized by the Director of the Department of Agriculture, and such disinfestation efforts are done in accordance with accepted practices of veterinary medicine and procedures approved by the Council.

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. No other subsections amended.

§ 70.70. Euthanasia Procedures.

(a) Unless otherwise authorized by law, sodium pentobarbital and such other agents as may be specifically approved by the Guam Board of Allied Health Examiners shall be the only methods used for euthanasia of an animal. A lethal solution shall be used in the following order of preference:

(1) intravenous injection by hypodermic needle;

(2) intraperitoneal injection by hypodermic needle;

(3) intracardial injection by hypodermic needle, but only if performed on heavily sedated, anesthetized, or comatose animals; or

(4) solution or powder added to food.

(b) An animal may be tranquilized with an approved and humane substance before euthanasia is performed.

(c) Succinylcholine chloride, curare, curariform mixtures, strychnine, nicotine, chloral hydrate, magnesium, potassium, or any substance which acts as a neuromuscular blocking agent, or any chamber which causes a change in body oxygen, may not be used on any animal for the purpose of euthanasia.

(d) Euthanasia shall be performed only by a licensed veterinarian, trained animal control officers, or an employee or agent, in accordance with § 121906 of Article 19, Part 2, Chapter 12, Title 10, Guam Code Annotated.

(e) An animal may not be left unattended between the time euthanasia procedures are first begun and the time that death occurs, and the animal's body may not be disposed of until a licensed veterinarian, or person, as authorized by § 121906 of Article 19, Part 2, Chapter 12, Title 10, Guam Code Annotated, confirms death.

(f) Notwithstanding the provisions of this Section or any other law to the contrary, whenever an emergency situation exists which requires the immediate euthanasia of a seriously injured, dangerous, or severely diseased animal, a peace officer or veterinarian may humanely destroy the animal.

(g) The remains of the euthanized animal shall be properly disposed of in accordance with Guam law.

(h) Any violation of this Section is a misdemeanor.

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

CLRC COMMENT: No change.

§ 70.75. Pre-Trial Provisions.

(a) Reporting and Immunity.

(1) The following designees, having a good-faith belief that any animal with whom the designee comes in contact has suffered a violation of this Article or that any person with whom the designee comes in contact has committed a violation of this Article, may report, or cause a report to be made to the Animal Control Division of the Department of Agriculture:

(A) a police officer; or

(B) a licensed social worker.

(2) Any designee making a report under this Subsection shall not be required to report such information communicated by a person if the communication is privileged under Guam law.

(3) Any designee making a report under this Subsection shall be immune from any civil or criminal liability by reason of making the report, unless the report was made in bad faith.

(b) Law Enforcement Policies.

(1) All officers as defined in § 70.15 of this Article have the duty and responsibility to enforce this Article to the extent authorized by law.

(2) All volunteer animal control officers, volunteer conservation officers, or similar volunteer law enforcement officers, whose positions are established by the government of Guam, have the duty and responsibility to enforce this Article to the extent authorized by law.

(c) Seizure.

(1) Search and Seizure With a Warrant. If there is probable cause to believe that an animal is being subjected to treatment in violation of this Article, an officer, after obtaining a search warrant, shall enter the premises where the animal is located and seize the animal.

(2) Search and Seizure Without a Warrant. If an officer witnesses a situation in which the officer determines that an animal's life is in jeopardy and immediate action is required to protect the animal's health or safety, the officer may seize the animal without a warrant. The officer shall immediately take an animal seized under this Subsection to a licensed veterinarian or animal shelter for medical attention to stabilize the animal's condition and to assess the health of the animal.

(3) Any person or facility receiving an animal seized pursuant to this Subsection shall provide the animal with minimum care.

(4) An officer shall not be liable for any damages for an entry under this Subsection.

(5) Any guardian of an animal that is impounded pursuant to this Subsection shall, within seventy-two (72) hours following the seizure, be given written notice of the seizure and legal remedies available to the guardian. The written notice shall be posted at the place of seizure, or delivered to an employee at the place of impoundment, or by registered mail if the guardian is known.

(6) The guardian from whom an animal is seized pursuant to this Subsection shall, within seventy-two (72) hours following the seizure, be given written notice of the seizure and legal remedies available to the guardian. The notice shall, at a minimum, be given by posting at the place of seizure, or by delivery to a person residing or working at the place of seizure, or by certified mail. Such notice shall include:

(A) the name, business address, and telephone number of the law enforcement entity responsible for seizing the animal;

(B) a description of the seized animal;

(C) the authority and purpose for the seizure, including the time, place, and circumstance under which the animal was seized; and

(D) a statement that the guardian is responsible for the cost of care for an animal who was lawfully seized,

and that the guardian will be required to post a bond with the court to defray the cost of care or the animal will be deemed forfeited.

(d) Costs-of-Care Bonds.

(1) An animal that has been impounded pending outcome of a criminal case, including charges under this Article, may prevent disposition of the animal by a caregiving agency that has temporary custody of the animal by posting a bond with the court in an amount the court determines is sufficient to provide for the animal's minimum care for at least thirty (30) days, including the day on which the animal was taken into custody.

(A) Such bond shall be filed with the court within ten (10) days after the animal is impounded. If a bond is not so posted, the animal shall be deemed forfeited and the custodial caregiving agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals. At the end of the time for which expenses are covered by the bond, if the owner, guardian, or person in possession of an animal, desires to prevent disposition of the animal by the custodial caregiving agency, a new bond shall be posted with the court within ten (10) days following the prior bond's expiration.

(B) If a new bond is not so posted, the animal shall be deemed forfeited and the custodial caregiving agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals.

(C) However, nothing in this Subsection shall prohibit the immediate disposition of the animal by euthanasia if, in the opinion of a licensed veterinarian, the animal is experiencing intractable extreme pain or suffering. The guardian shall be liable for all costs of providing minimum care, or disposal of the animal.

(2) If a bond has been posted in accordance with Subsection (d)(1) of this Section, the custodial caregiving agency may draw from the bond the actual reasonable costs incurred by the agency in providing minimum care to the seized animal from the date of initial seizure to the date of final disposition of the animal in the criminal action.

(e) Protective Orders.

(1) A mandatory restraining order is created against any person charged with a felony under this Article.

(2) The order may remain in effect from the time that the defendant is advised of their rights at arraignment or the defendant's first appearance before the court and informed of such order, until final disposition of the action.

(3) The order may restrain the defendant from contacting, harassing, molesting, intimidating, retaliating against, or tampering with:

(A) any animal(s) victimized by the acts charged;

(B) any guardian or owner, other than the defendant, of such animal(s); or

(C) any witness to the acts charged.

(4) Any restraining order issued pursuant to Subsection (e) of this Section, shall be on a standardized form prescribed by the Superior Court of Guam.

(5) A copy of the restraining order shall be provided to the protected parties.

(6) The court may include an animal in any protective order authorized by this Article.

CLRC COMMENT: No change.

§ 70.80. Sentencing Provisions.

(a) Community Service. In addition to any other sentence it may impose, the court may order the defendant to participate in community service. No such participation shall occur at any humane society, animal shelter, or other facility where an animal is present, unless first approved by said organization.

(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.

(2~~3~~) Treatment may include, but is not limited to, counseling and humane education classes.

(3~~4~~) Treatment may be conducted in-person or online.

(4~~5~~) All costs of the evaluation, care and treatment shall be borne by the defendant. However, if the court determines that the defendant is indigent, the government of Guam may provide access to government funded or government contracted service providers, if available.

(c) Education. The Department of Agriculture shall make available educational material and information regarding proper animal care and welfare to the defendant. At a minimum, such information shall be made available in printed form or online, as deemed appropriate by the Department of Agriculture.

(d) Forfeiture. In addition to any other sentence it may impose, the court shall require a defendant convicted under this Article to forfeit all legal interest of the defendant in the animal subjected to the violation. The court shall award all such interest to the animal to a caregiving agency.

(e) Contact with Animals.

(1) In addition to any other penalty imposed by law, a court may require a defendant convicted of a felony under this Article to not own, possess, or have custody or control of any animal for a minimum period of five (5) years on a first offense; and for a minimum period of fifteen (15) years on a second or subsequent offense.

(2) A violation of this Subsection is a petty misdemeanor and shall result in the forfeiture of the offender's interest in the animal.

(3) Notwithstanding any other provision of law, an officer may immediately seize any animal found to be kept in violation of this Subsection.

(f) Reimbursement of Costs to Caregiving Agency. In addition to any other sentence it may impose, the court shall require a defendant convicted under this Article to repay all reasonable costs incurred by any person or organization prior to judgment in seizing and providing minimum care for each animal subjected to mistreatment in violation of this Article.

(g) Restitution to Guardian. In addition to any other sentence it may impose, the court shall order that restitution be made by a defendant convicted under this Article to the guardian of any animal subjected to mistreatment by the defendant in violation of this Article. The measure for restitution shall be the actual pecuniary value of such loss, including, but not limited to, the actual veterinary expenses, special supplies, and other costs incurred by the animal's guardian in treating the animal and in attempting to restore the animal to good health or to otherwise ameliorate the effects of the criminal violation.

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.

§ 70.85. Civil Right of Action for the Wrongful Injury or Death of an Animal.

(a) Any person who, with no lawful authority, intentionally, knowingly, recklessly, or with criminal negligence causes physical injury to, or the death of, an animal shall be liable to the animal's guardian for the damages sustained by the guardian. The guardian of the animal may bring a civil action to recover such damages. Damages may include the pecuniary value of the animal; veterinary expenses incurred on behalf of the animal; any other expenses incurred by the guardian in attempting to ameliorate the effects of, or as a consequence of, the pain, suffering or injuries of the animal; any emotional distress and loss of companionship suffered by the guardian; all court costs and reasonable attorney's fees incurred in the prosecution of any action under this Section; and any other reasonable damages resulting from the physical injury or death of the animal.

(b) Restraining orders and other injunctive relief may be issued by the Superior Court of Guam as appropriate.

(c) The remedies provided in this Section are in addition to, and do not replace or supplant, any other remedies allowed by law.

(d) Commencement of a cause of action under this Section shall be brought within three (3) years from the date on which damages were first identified by the guardian.

CLRC COMMENT: No change.

ARTICLE 2

DISCRIMINATION IN HOUSING ACCOMMODATIONS

§ 70.210. Declaration of Policy.

It is hereby declared to be the policy of the territory of Guam in the exercise of its police power for the public safety, public health and general welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, sex or national origin and, to that end, to prohibit discrimination in housing by any person.

CLRC COMMENT: No change.

§ 70.220. Definitions.

When used in this Article:

(a) Discrimination or discriminatory housing practice means any difference in treatment based upon race, color, religion, sex or national origin, or any act that is unlawful under this Article;

(b) Financial institution includes any person, as defined herein, engaged in the business of lending money or guaranteeing losses;

(c) Housing accommodation or dwelling means any building, mobile home or trailer, structure or portion thereof which is occupied as or designed, or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure or portion thereof, or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this Subsection;

(d) Mortgage broker means an individual who is engaged in or who performs the business or services of a mortgage broker as the same are defined in the Government Code;

(e) Open market means the market which is informed of the availability for sale, purchase, rental or lease of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs or by any other advertising methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental or lease;

(f) Owner includes a lessee, sub-lessee, cotenant, assignee, managing agent or other person having the right of ownership or possession, or the right to sell, rent or lease any housing accommodation;

(g) Person includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations;

(h) Real property includes buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums; and

(i) Real estate broker or real estate salesman includes any individual, qualified by law, who, for a fee, commission, salary or for other valuable consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents or leases any housing accommodations, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collecting of a fee in connection with a contract whereby he undertakes or promote the sale, purchase, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

CLRC COMMENT: No change.

§ 70.230. Unlawful Practices.

In connection with any of the transactions set forth in this Section, which affect any housing accommodation on the open market or in connection with any public sale, purchase, rental or lease of any housing accommodation, it shall be

unlawful within the Territory for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above, to:

(a) refuse to sell, purchase, rent or lease, or deny to or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(b) to discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities of services in connection therewith;

(c) to refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(d) to refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(e) to represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation, because of his race, color, religion or national origin, sex or place of birth;

(f) to make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form or application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to make a discrimination;

(g) to offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith;

(h) to induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, sex or national origin or place of birth in the area to be affected by such sale, purchase, rental or lease will or may result in either:

(1) the lowering of property values in the area;

(2) an increase in criminal or antisocial behavior in the area; or

(3) a decline in the quality of schools serving the area;

(i) to make any misrepresentations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for any of the above, or the sale, purchase, rental or lease of any housing accommodation in any area in the Territory for the purpose of including or attempting to induce any such listing or any of the above transactions;

(j) to engage in, or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest or create or play upon fear, with the purpose of either discouraging or inducing, or attempting to induce, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation;

(k) to retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this Article, or because he has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this Article;

(l) to aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this Article, or to obstruct or prevent any person from complying with the provisions of this Article, or any order issued thereunder;

(m) by canvassing, to commit any unlawful practices prohibited by this Article;

(n) otherwise to deny to, or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth;

(o) for any bank, savings and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part, in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration or other terms or conditions of such loans or other financial assistance, because of the race, color, religion, sex or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance or of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; or

(p) to deny any qualified person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership or participation on account of race, color, religion, sex or national origin.

CLRC COMMENT: No change.

§ 70.240. Exemptions.

This Article shall not apply to:

(a) a religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society, which limits the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purposes to persons of the same religion, or which gives preference to such persons, unless membership in such a religion is restricted on account of race, color, sex or national origin;

(b) a private club not in fact open to the public, which, as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, and which limits the rental or occupancy of such lodgings to its members or gives preference to its members;

(c) any single-family house sold or rented by an owner; provided, that such private individual owner does not own more than three (3) such single-family houses at any one time; provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this Subsection shall apply only with respect to one such sale within any twenty-four month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or served on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at any one time; provided further, that the sale or rental of any such single-family house shall be excepted from the application of this Article only if such house is sold or rented:

(1) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent or any such broker, agent, salesman or person; and

(2) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of the provisions of § 70.47 of this Code; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title; or

(d) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently or each other, if the owner actually maintains and occupies one of such living quarters as his residence.

CLRC COMMENT: No change.

§ 70.250. Procedure.

Any person aggrieved by an unlawful practice prohibited by this Article may file a complaint with the Attorney General within thirty (30) days after the aggrieved person becomes aware of the alleged unlawful practice, and in no event shall

exceed more than sixty (60) days after the alleged unlawful practice occurred. The Attorney General or his duly authorized representative shall investigate each complaint and attempt to resolve such complaint. Failure to achieve a resolution acceptable to both parties and in compliance with this Article shall cause the Attorney General to commence prosecution.

CLRC COMMENT: No change.

§ 70.260. Other Remedies.

Nothing herein contained shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled.

CLRC COMMENT: No change.

§ 70.270. Penalties.

Any person violating any provision of this Article shall, upon conviction thereof, be guilty of a misdemeanor.

CLRC COMMENT: No change.

ARTICLE 3

THE GUAM SOCIAL HOST ACT AND POSSESSION OF CANNABIS BY PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE

§ 70.310. Title.

This Article shall be known and may be cited as The Guam Social Host Act.

CLRC COMMENT: No change.

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

(a) No person twenty-one (21) years or older shall knowingly give or otherwise make available any alcoholic beverage or cannabis to a person under the age of twenty-one (21) years. A person violates this Section who gives or otherwise makes available an alcoholic beverage or cannabis to a person under the age of twenty-one (21) with the knowledge that the person to whom the alcoholic beverage or cannabis is made available will violate this § 70.53.

(b) A person violates this Section who owns, occupies, or controls premises on which alcoholic beverages or cannabis are consumed by any person under twenty-one (21) years of age, and who knows of alcohol or cannabis consumption by persons under twenty-one (21) years of age on such premises, and who reasonably could have prohibited or prevented such alcohol or cannabis consumption.

(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

(2) in addition to the sentence referenced in Subsection (c)(1) the court *may* require the violator to make restitution for any damages to property or a person caused by a violation of this § 70.53, and *may* require participation in volunteer service to a community service agency.

(d) The prohibitions of this Section apply only to a person who is present and in control of the location at the time the consumption occurs. The prohibitions of this Section do not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.

(e) This Section *shall not* apply to any religious practice, observance, or ceremony.

(f) The violations of this Section and the resulting penalties prescribed herein, supra, are in addition to other violations of public law related to alcoholic beverages or cannabis.

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.

§ 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 ~~petty misdemeanor~~ violation 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.

ARTICLE 4

MISCELLANEOUS CRIMINAL OFFENSES

§ 70.410. Tattoos, Brands, Scarifications and Piercings; Minors; Violation; Classification; Anesthesia; Defense; Definition.

(a) It is unlawful to tattoo a person who is under eighteen (18) years of age without the physical presence of that person's parent or legal guardian.

(b) It is unlawful for a person who tattoos or pierces the body of another person to use a needle or ink more than once, or to use a needle that is not pre-sterilized or autoclaved.

(c) A person must be a licensed healthcare professional to administer any form of subcutaneous local anesthesia during the course of any procedure involving the branding, scarifying, tattooing or piercing of the body of another person.

(d) It is a defense to a prosecution for a violation of Subsection (a) that the person requested age identification, and relied in good faith on the accuracy of the information contained in the identification.

(e) A person who violates this Section is guilty of a misdemeanor.

(f) For the purposes of this Section, tattoo means any indelible design, letter, scroll, figure, symbol or other mark that is placed on or under the skin with ink or colors by the aid of needles or other instruments, and that cannot be removed without a surgical procedure or any design, letter, scroll, figure or symbol or other mark done by scarring on or under the skin.

CLRC COMMENT: No change.

§ 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 Pago 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.

~~**§ 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.

§ 70.440. Revealing Expunged Record Prohibited.

A person is guilty of a misdemeanor if he permits to be made public or reveals to any person not entitled to review it any official record of the court, Attorney General or any other entity of the government of Guam which has been expunged in accordance with § 271 of the Code of Civil Procedure or Chapter 11 of Title 8 GCA.

CLRC COMMENT: No change.

~~§ 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.

CHAPTER 71

THE GUAM GUN-FREE SCHOOL ZONE ACT OF 2004

§ 71.10. Title.

This Chapter shall be known, and may be cited, as >>The Guam Gun-Free School Zone Act of 2004''.

CLRC COMMENT: No Change

§ 71.20. Definitions.

As used in this Chapter, the following definitions shall apply:

(a) "School zone'' means an area in, or on the grounds of, a public or private school providing instruction in early childhood, kindergarten or grades 1 to 12, inclusive.

(b) "Firearm'' shall mean as defined in 10 GCA § 60100.

~~(c) "Concealed firearm'' shall mean as defined in 9 GCA § 60108(c).~~

CLRC COMMENT: Subsection (c) is unnecessary as the term "Concealed Firearm" is not used in this chapter.

§ 71.30. ~~Person Not Allowed to Possess Firearms~~ Possession of Firearms in a School Zone.

Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in ~~paragraph (a) of Subdivision~~ § 71.20(a) of this Chapter, shall be punished as specified in ~~Subdivision~~ § 71.60.

CLRC COMMMENT: Non-substantive clarifications.

§ 71.40. Prohibition on Discharge of Firearm.

It shall be unlawful for any person to discharge, or attempt to discharge, a firearm in a school zone, as defined in ~~paragraph (a) of Subdivision~~ § 71.20(a) of this Chapter. The prohibition contained in this ~~Subdivision~~ Section does not apply to the discharge of a firearm if the firearm is discharged in an area that is designated as a shooting range at a University or College.

CLRC COMMENT: Non-substantive clarifications.

§ 71.50. Firearms Prohibited on University or College Property.

~~(a)~~ It shall be unlawful for any person to bring or possess a ~~loaded~~ firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority. Notwithstanding § 71.80, a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this Section.

~~(b) It shall be unlawful for any person to bring or possess a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority. Notwithstanding Section § 71.80, a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this Section.~~

CLRC COMMENT: Subsections (a) and (b) are the same except for the word "loaded" in (a). Recommend deletion of "loaded" in (a) and deletion of (b) in its entirety.

§ 71.60. Punishment.

Any person who ~~violates~~ is convicted of violating § 71.30, § 71.40, or § 71.50 of this Act shall be guilty of a felony of the third degree and ~~any person who is convicted of an offense pursuant to § 71.30, § 71.40, or § 71.50~~ shall be sentenced as follows:

(a) For a first offense, the Court shall impose a sentence of imprisonment of no more than three (3) years, a fine of not less than One Thousand Dollars ($1,000.00), and mandatory community service of no less than one hundred and fifty (150) hours.

(b) In cases where the person has been convicted of felonies under any provision of this Chapter, the person shall be sentenced to a term of imprisonment which shall not be less than five (5) years and in addition, may be fined not more than Fifteen Thousand Dollars ($15,000.00). The sentence~~, if for a term of years,~~ shall include a special parole term of not less than one (1) year in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended, and probation shall not be granted. Sentence in these cases must also include mandatory community service of no less than one hundred fifty (150) hours unless the term of imprisonment is for life.

(c) The Court shall apply any minimum sentence, fine or community service specified in this Section, except in unusual cases where the interests of justice would best be served ~~by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment, fine or community service required in this Subdivision or~~ by granting probation or suspending the execution or imposition of sentence, fine or community service with conditions other than those set forth in this Section, in which case the Court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

CLRC COMMENT: Remove unnecessary verbiage.

§ 71.61. Information for Sentencing.

Except as otherwise provided in 9 GCA Chapter 80 ~~of Title 9 of the Guam Code Annotated~~, no limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which the Superior Court of Guam may receive and consider for the purpose of imposing an appropriate sentence under this Chapter.

CLRC COMMENT: Non-substantive clarifications.

~~**§ 71.70. What Constitutes a Loaded Firearm.**~~

~~For purposes of this Chapter, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.~~

CLRC COMMENT: Recommend deletion of this section. Section 71.30 provides the central prohibition against bringing or possessing a firearm in a school zone and does not distinguish between "loaded" or "unloaded" firearms. Also, with the recommended changes to § 71.50, this § 71.70 is not necessary.

§ ~~71.80~~ 71.70. Notice.

~~(a)~~ The Department of Education and other entities covered by this Chapter shall post permanent signs with large visible lettering stating at a minimum, "Warning this is a Gun-Free Zone" at the main entrances of the covered facilities within their control ~~on or before January 1, 2005~~. This Section does not require that notice be posted regarding the proscribed conduct for the purposes of prosecution of any violation of this Act.

~~(b) The Guam Police Department within sixty (60) days of the effective date of this Act shall implement a public relations campaign to inform the general public of its provisions.~~

CLRC COMMENT: Recommend deletion of (b) as it is outdated.

§ ~~71.81~~ 71.80. Chapter Not Applicable ~~to Peace Officers and Military~~.

(a) This Chapter does not apply to a duly appointed peace officer as defined in 8 GCA § 5.55, ~~Article 2, Chapter 5, Title 8, Guam Code Annotated,~~ a full-time paid peace officer of another state or the Federal government who is carrying out official duties while in Guam, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of Guam or of the United States who is engaged in the performance of his or her duties, or an armored vehicle guard engaged in the performance of his or her duties.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

~~§ 71.82. Not Applicable to Security Guards.~~

(b) This Chapter does not apply to an on-duty security guard authorized to carry a loaded firearm, provided the security guard is an employee of an entity contracted by the school for security purposes.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

~~§ 71.83. Not Applicable to Existing Shooting Ranges.~~

(c) This Chapter does not apply to an existing shooting range at a public or private school or university or college campus.

CLRC COMMENT: Recommend consolidating 71.80, 71.82 and 71.83 into one exemption section.

§ 71.90. Severability.

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

CLRC COMMENT: No Change

CHAPTER 86

COMPENSATION FOR DAMAGES FROM CRIMINAL ACTIVITIES

~~**NOTE:** This Chapter was added by P.L. 20-155:2 (Mar. 21, 1990); amended and moved by P.L. 27-138:4 (Dec. 30, 2004) to Chapter 161, Title 8, Guam Code Annotated.~~

CLRC COMMENT: This chapter was moved to 8 GCA Chapter 186, however, its title and the note memorializing its removal have remained in the GCA since 2004. This chapter was referred to the Compiler of Laws for removal from the GCA.

CHAPTER 87

VICTIM NOTIFICATION

~~**NOTE:** This Chapter was enacted by P.L. 20-155:1 (Mar. 21, 1990) as Chapter 85. Since Chapter 85 was occupied, renumbered and codified by Compiler as Chapter 87. Repealed in its entirety by P.L. 27-138:3 (Dec. 30, 2004).~~

CLRC COMMENT: This Chapter 87 was repealed in its entirety by P.L. 27-138:3 (2004), which enacted 8 GCA Chapter 160 (Crime Victim's Rights Act of 2004). Victim notification is covered in that Chapter 160. This chapter was referred to the Compiler of Laws for removal from the GCA.

CHAPTER 90

CORRECTIONS

ARTICLE 1

DEPARTMENT OF CORRECTIONS

§ 90.10. Definitions.

As used in this Chapter:

(a) Director means the Director of Corrections.

(b) Department means the Department of Corrections.

(c) Detainee means a person temporarily committed to the custody of the Director, including but not limited to commitment due to pretrial status, federal hold, probation violation, or parole violation.

(d) Inmate means a person committed to the custody of the Director post-adjudication, after imposition of a sentence to a term of imprisonment.

(e) Prisoner means a person committed to the custody of the Director as a detainee or inmate.

CLRC COMMENT: Recommend renumbering all sections in this Title to comport with the reset of the GCA. Recommend adding new definitions (c), (d), and (e).

~~§ 90.15. General Duties of Department of Corrections.~~ Mission Statement.

~~The Department shall protect the public from the destructive action of law offenders through control and rehabilitation. It shall provide staff services for the judiciary, the Parole Board, probation officers and interested agencies of the Executive Branch.~~

To promote public safety through custody and control of criminal offenders while providing a safe and humane environment for their treatment, rehabilitation, and reintegration back into the community as productive citizens.

CLRC COMMENT: Recommend replacing General Duties of Department of Corrections with a Mission Statement.

§ 90.16. Minimum Qualifications for Department of Corrections Officers.

(a) Notwithstanding other provisions of law to the contrary, persons appointed as Corrections Officer *shall*~~:~~ meet the qualifications for employment as a peace officer as defined by the Peace Officer Standards and Training Commission in 17 GCA § 51104 and applicable rules and regulations.

~~(1) be a resident of Guam and a U.S. citizen;~~

~~(2) be of good health and good moral character;~~

~~(3) be over the age of eighteen (18) years;~~

~~(4) be a high school graduate *or* equivalent, but the POST Commission may set higher academic qualifications for all applicants as the Commission considers necessary;~~

~~(5) submit to and pass a drug screening test, including, but *not* limited to, a urinalysis test;~~

~~(6) submit to psychological testing; and~~

~~(7) submit to a polygraph examination.~~

~~(b) No person shall be appointed as a Corrections Officer who has *not* established satisfactory evidence of qualifications by passing a physical examination, which *shall* include a physical agility test, and written examinations based upon standards relevant to the duties to be performed, which standards *shall* be established by the Director of Corrections in conjunction with the Department of Administration.~~

~~(c) No person shall be appointed as a Corrections Officer who has been convicted in any civilian or military court of a felony, a crime involving moral turpitude, a crime of domestic or family violence, or who has been administratively pardoned of any crime.~~

~~(d) No person shall be appointed as a Corrections Officer before a thorough investigation of the applicant's background and moral character is completed.~~

~~(e)~~ (b) A Corrections Officer dismissed for cause *shall* be permanently ineligible for appointment reappointment, or reemployment to any position in the Department. A Corrections Officer who resigns for the sole purpose of negating or averting a pending or anticipated disciplinary action to dismiss the Corrections Officer *shall* be ineligible for reappointment or reemployment.

~~(f) No person shall be appointed as a Corrections Officer who has *not* established satisfactory evidence of the ability to understand and work with persons with disabilities, including special needs and mental illness. Evidence of such ability *shall* be by a certificate of completion of the appropriate training as approved by the Department of Integrated Services for Individuals with Disabilities, as a condition for selection prior to appointment as a Corrections Officer. For the purpose of this Section, the term disability(ies), as is defined in the *Americans with Disabilities Act*, *shall* mean a physical or mental impairment that substantially limits one (1) or more major life activities of an individual. Incumbent uniformed officers who *do not* have a certificate of completion of the training as required in this Act *shall*, within six (6) months following the enactment of this Act, submit to the Department of Administration such certification as required herein.~~

CLRC COMMENT: Recommend amendments with deference to Peace Officer Standards and Training (POST) laws and regulations.

§ 90.16.1. Annual Corrections Officer Recruits Training Cycle.

~~(a)~~ The Department of Corrections shall conduct a corrections officer recruits training cycle for at least twenty (20) candidates per fiscal year, subject to the availability of funds.

~~(b) Each year, the Director of the Department of Corrections shall determine the total cost to conduct a recruitment and training cycle pursuant to the requirements set forth in Subsection (a) of this Section and he/she shall transmit this as part of the Department's proposed budget to *I Maga'hagan Guahan* for inclusion in the Executive Budget request that *I Maga'hagan Guahan* submits annually to *I Liheslaturan Guahan*.~~

~~(c) The Director of the Department of Corrections shall submit a report to *I Maga'hagan Guahan* and the Speaker of *I Liheslaturan Guahan* no later than June 30 of each year to present an update on the corrections officer recruits training cycle conducted during that fiscal year pursuant to the requirements set forth in this Section.~~

CLRC COMMENT: According to the DOCO Subcommission and DOC representatives, subsection (b) is superfluous because the request is already included in the annual appropriations request; for subsection (c), repeal was suggested because lack of funding/appropriations meant that DOC was unable to conduct training cycles on an annual basis.

~~§ 90.20. Corrections Advisory Council Established.~~

~~There is hereby the established Corrections Advisory Council, composed of the Chairman of the Guam Parole Board, the Chief Judge of the Superior Court, the Administrator of Social Services (Director, Public Health and Social Services) or his designee, the Principal of the Vocational & Technical High School or his representative, the United States Attorney or his representative and, in addition, one (1) representative from the business community and one (1) member of the general public, who shall be appointed by the Governor with the advice and consent of the Legislature. The Director of the Department shall be ex officio secretary of the Council and the Department shall furnish necessary logistic support. The Council shall advice the Director and the Department as to the policies and procedures to carry out the intent and purposes of this Chapter.~~

CLRC COMMENT: Recommend deletion of this section. According to DOC, this Council has never met.

§ 90.25. General Powers and Duties of Director ~~to Establish Prisons~~.

(a) The Director shall establish and operate correctional institutions, and other places of confinement, for inmates and detainees ~~for prisoners serving sentences of imprisonment imposed by the Courts of Guam and other authorized prisoners, and other persons placed in the custody of the Director, pursuant to the laws of Guam.~~

(b) As head of the Department, the Director shall administer the Department, and:

(1) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law.

(2) May establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and discretion of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.

(3) May delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.

(4) Shall, when the need arises to use correctional facilities to serve as overflow lock-up, keep inmates and detainees separate and apart.

(c) The Director shall have the authority to promulgate, adopt, and amend rules and regulations in accordance with the Administrative Adjudication Law (codified at Chapter 9 of Title 5, Guam Code Annotated) necessary to implement this Chapter and for the administration of the Department.

(d) The Director of the Department of Corrections must make reasonable efforts:

(1) to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.

(2) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is not a threat to the infant's and the public's safety and welfare.

CLRC COMMENT: This section consolidates §§ 90.25, 90.27, 90.30, 90.35 and 90.40 with amendments.

§ 90.26. Correctional Medical Clincs.

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 a 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 set forth in a 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 the 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 1, 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: New provision added.

~~**§ 90.27. Prison May Serve as Overflow Lock-Up.**~~

~~In the event that a court of competent jurisdiction finds that a facility used to detain persons charged with a crime is inadequate, the court may direct the Director to hold such persons in his custody. Such person shall be detained in an area separate and apart from those persons who have been convicted of a crime and are serving sentences of imprisonment.~~

CLRC COMMENT: Moved to § 90.25(b)(4) with amendments.

~~**§ 90.30. Rules, Regulations & Disciplinary Rules Authorized.**~~

~~The Director subject to the approval of the Governor by Executive Order, is authorized to make rules and regulations for the administration of correctional institutions and other places of confinement, including, but not limited to, necessary disciplinary measures for inmates thereof and for their treatment, care, labor, rehabilitation and reformation.~~

CLRC COMMENT: Moved to § 90.25(c) with amendments.

~~**§ 90.35. Director to Control Organization of DOC; Appoint Staff.**~~

~~(a) The Director may establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and discretion of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.~~

~~(b) The Director may appoint and rename officers and other employees within the Department in accordance with the provisions of Title 4 of the Guam Code Annotated.~~

~~(c) The Director may delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.~~

CLRC COMMENT: Moved to § 90.25 (b)(2) and (3) with amendments.

~~**§ 90.40. General Duties of Director of Corrections.**~~

~~As head of the Department, the Director:~~

~~(a) Shall administer the Department.~~

~~(b) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law.~~

~~(c) May formulate and adopt rules necessary or proper for the internal administration of the Department, subject to the approval of the Governor.~~

CLRC COMMENT: Moved to 90.25(b)(1) with amendments.

§ 90.41. ~~Inmate~~ Commissary.

~~Notwithstanding any other provision of law, the~~ The Department ~~of Corrections (DOC)~~ is authorized to operate or outsource the operation of ~~an inmate~~ a commissary within the confines of DOC. This Section *shall* exempt DOC from the provisions of 21 GCA § 60112 in order to provide DOC the authority to lease property to an approved vendor to operate the commissary facility without first seeking legislative approval.

CLRC COMMENT: Non-substantive amendments.

§ 90.42. Operation of ~~Inmate~~ Commissary.

(a) The Director ~~of DOC~~ may operate, or contract with another person or entity to operate, a commissary for the use of the inmates and detainees confined at DOC.

(b) The Director may enter into a contract for the lease of space to accommodate the commissary. ~~In accordance with 5 GCA Chapter 5 (Guam Procurement Law), the Department of Corrections is authorized to enter into a contract for the lease of up to three hundred (300) square feet of its property for an inmate commissary. Procurement of said contract *shall* be done by a DOC staff member who is qualified under 5 GCA § 5141.~~

~~(c) Funds directed as a result of revenue received from the contract under Subsection (b) of this Section *shall* be subject to an annual audit by the Office of Public Accountability.~~

~~(d) When entering into a contract under Subsection (a) of this Section, the Director or the Director's designee *shall* consider the following:~~

~~(1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;~~

~~(2) the menu items offered by the provider and the price of those items;~~

~~(3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;~~

~~(4) safety and security procedures to be performed by the provider; and~~

~~(5) the performance record of the provider, including service availability, reliability, and efficiency.~~

~~(e) The Department of Corrections *shall* establish policy and procedures for the administration of this Section. Such policy and procedures *shall* be transmitted to *I Liheslaturan Guåhan* prior to operation of the inmate commissary.~~

~~(f) The Department of Corrections *shall* establish rules and regulations for the administration of this Section prior to operation~~ of the inmate commissary.

~~§ 90.43. Corrections Commissary Fund.~~

(c) Corrections Commissary Fund. There is hereby established a Fund to be known as the Corrections Commissary Fund (CCF), which *shall* be maintained separate and apart from other funds of the government of Guam. All funds collected by the government of Guam from the operations of a commissary *shall* be deposited in the CCF; and, interest and investment earnings *shall* be credited to the assets of the CCF and *shall* become part of the CCF~~. Any remaining balance in the CCF at the end of the fiscal year *shall* be carried over to the next fiscal year.~~

(d) ~~Inmate Improvement.~~ The Director may use ~~up to fifty percent (50%) of~~ the net proceeds of the CCF for inmate and detainee improvement. ~~to develop or enhance inmate welfare; and the other fifty percent (50%) *shall* be used for rehabilitation programs within the Department of Corrections.~~

CLRC COMMENT: Sections 90.42 and 90.43 consolidated with amendments.

§ 90.44. ~~Inmate~~ Phone Access Act of 2021.

(a) There is hereby created, within the Department of Corrections, a revolving fund called the "Inmate Phone Access Fund" (Fund), which shall be established by the Department of Administration in accordance with the following provisions:

(1) Notwithstanding any other provision of law, any revenue that is collected by the Government of Guam for telephone services within the Guam Department of Corrections shall be deposited into said Fund.

(2) Any revenue that is deposited into said Fund is to be used to provide no-cost telephonic services for indigent inmates or indigent detainees to contact their legal counsel.

(3) Should revenues deposited into this Fund not be adequate to provide no-cost telephonic services for indigent inmates to contact their legal counsel, the Director of the Department of Corrections and *I Maga'hågan Guåhan* shall ensure that any indigent inmate or indigent detainee be provided with their constitutional right to consult legal counsel through no-cost telephonic service by any means that the Director or *I Maga'hågan Guåhan* sees fit.

(4) For the purposes of this Section, "indigent inmates" or "indigent detainees" shall mean those persons charged in a criminal case before the courts of Guam who are determined indigent consistent with 12 GCA § 11104.

~~(b) Notwithstanding any other provision of law, within thirty (30) days of the enactment of this Section, the Director of the Department of Corrections shall create and implement a policy where indigent inmates shall be allowed to call the Public Defender Service Corporation, the Alternate Public Defender, or their Attorney of Record, at no cost to the indigent inmate. The Director of the Department of Corrections shall submit a report to *I Liheslatura* upon the creation and implementation of said policy.~~

CLRC COMMENT: According to DOC, subsection (b) should be repealed as there is already a policy in place.

§ 90.45. Authorization to Transfer ~~Prisoners~~ Inmates to Federal Correctional Institutions.

The Director is authorized to enter into one or more contracts with the Attorney General of the United States pursuant to the authority granted to the Attorney General of the United States by Title 18, United States Code, § 5003, for the custody, care, subsistence, education, treatment and training in one or more Federal correctional institutions, of persons convicted of criminal offenses in the courts of Guam; provided, that any such contract shall provide for the reimbursement of the United States in full for all costs or other expenses incurred by the United States for such custody, care, subsistence, education, treatment and training; and provided further, that the Director shall comply with the relevant provisions of §§ 90.46 through 90.48 inclusive of this Code prior to the physical transfer of any such person to a Federal correctional institution.

CLRC COMMENT: Non-substantive amendments.

§ 90.46. Emergency Transfers of Inmates.

(a) Existence of correctional emergency. The Director may declare a correctional emergency under the following circumstances:

(1) When the Director determines the existence of conditions which have affected, or in the immediate future will affect, the physical integrity of any correctional institution over which he has jurisdiction or the health or safety of the inmates thereof; and

(2) The effect of such conditions will, in the Director's opinion, be to render such institution unable to provide secure custody and proper care for the inmates thereof. The term 'conditions' as used hereinabove includes, although it is not limited to fire, earthquake, explosion, typhoon, flood, other acts of God and calamitous events and diseases, but it shall not include riot, insurrection or any other disturbance created by the inmates of such institution.

(b) Procedure for Declaration. Whenever the Director determines the existence of a correctional emergency as defined hereinabove, he shall make and execute a short, plain written statement setting forth the nature of such emergency and the basis for his opinion that such emergency will render such institution unable to provide secure custody and proper care for the inmates thereof. Such statement shall be filed in the permanent records of the Department as soon after its execution as is practicable. Copies of such statement shall be delivered to the Parole Board and to the Office of the Attorney General within five (5) calendar days after its execution by the Director.

(c) Transfer of Inmates. Following the declaration of a correctional emergency as provided for hereinabove, the Director may, without further delay, enter into one or more contracts such as those contemplated by §§ 90.45 of this Code or by Article III of the Western Interstate Corrections Compact (§ 90.52 of this Code), and he may thereafter transfer an inmate or inmates of the correctional institution for which such correctional emergency was declared to another correctional institution without any further administrative proceedings; provided, however, that any transfer of an inmate or inmates under conditions of correctional emergency shall be to a correctional institution within Guam, if such then exists and then has the capability of providing secure custody and proper care to such inmate or inmates, and that no inmate shall be transferred to a correctional institution outside of Guam under conditions of correctional emergency unless no correctional institution then existing within Guam then has the capability of providing secure custody and proper care to such inmate.

(d) Termination of Correctional Emergency. Whenever the Director determines that the conditions which necessitated the declaration of a correctional emergency no longer have the effect of rendering the correctional institution unable to provide secure custody and proper care for the inmates thereof, the Director shall declare the termination of such correctional emergency. Such declaration shall be in writing and executed by the Director and shall be filed and delivered as set forth in Subsection (b) of this Section. Such termination shall be effective immediately upon its execution.

(e) Return of Inmates. Upon the termination of a correctional emergency, all inmates who were transferred under the provisions of Subsection (c) of this Section shall immediately be returned to the correctional institution from which they were transferred, at the Department's expense.

CLRC COMMENT: No Change.

§ 90.47. ~~Inmate Transfer:~~ Non-Emergency Transfers of Inmates.

The Director ~~of Corrections~~ is authorized to transfer an inmate to a correctional institution outside of Guam in non-emergency circumstances.

CLRC COMMENT: Non-substantive amendments.

§ 90.47.01. ~~Same:~~ Disciplinary Transfers of Inmates.

The Director may recommend the transfer of an inmate to an institution outside of Guam for disciplinary reasons in the following circumstances:

(a) when an inmate is alleged by an officer, employee or other inmate to have committed a violation of such institution's rules or regulations, which violation might constitute a threat to the order or discipline of the institution or to the ~~physical~~ safety of an officer, employee or any inmate; or harm to the public; or

(b) when an inmate is subsequently convicted of a violation of § 58.20 or § 58.30 of this Code~~, or of any violent crime.~~

CLRC COMMENT: Non-substantive amendments.

§ 90.47.02. ~~Same:~~ Non-disciplinary Transfers of Inmates.

The Director may recommend the transfer of an inmate to an institution outside of Guam for non-disciplinary circumstances under either of the following circumstances:

(a) whenever the Director determines that, due to the physical or mental condition of an inmate, the present incarceration lacks adequate facilities for custody, care, subsistence, education, treatment or training of the inmate, and that of the inmate would be better served by transfer to an institution outside of Guam; or

(b) whenever the Director determines that due to overcrowding which impacts on the adequacy of the facility to provide for the safe custody, care, subsistence, education, treatment and training of an inmate the interest of the inmate is better served by such transfer to an institution outside Guam.

CLRC COMMENT: Non-substantive amendments.

§ 90.47.03. ~~Same:~~ Procedures for Transfers of Inmates.

Whenever the Director ~~of the Department of Corrections~~ determines that an inmate be recommended for transfer to a correctional institute outside of Guam, the Director shall ~~convene a Transfer Review Committee to~~ review the basis for such recommended transfer. The Director shall ~~promulgate~~ provide ~~through Executive Order rules and regulations for the establishment of a Transfer Review Committee to include:~~

~~(a) a minimum of five (5) members to include a DOC case worker, the Attorney General or representative, a correctional officer, an inmate, a member of the clergy;~~

~~(b) provisions~~ for due notice on a recommended transfer, which shall include timely notice to the inmate and the Attorney General; and

~~(c) provisions~~ for hearing, final decision and appeal from a final decision of transfer~~;~~ .

~~(d) provisions for maintaining~~ The Director shall maintain a record of each hearing.

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

~~**§ 90.47.04. Same: Basis of Determination.**~~

~~(a) The Transfer Review Committee shall base its determination for transfer upon substantial evidence as presented on the record at hearing, and shall be final. No inmate shall be recommended for transfer while any conviction for which he was incarcerated is on appeal. Any statement made by an inmate during the course of a transfer hearing shall not be admitted~~

~~in evidence against the inmate in any subsequent criminal action, except for the purpose of impeachment or in a trial for perjury, false swearing or contempt.~~

~~(b) The Administrative Adjudication Law and the Open Government Law shall not apply to any proceeding or action taken under this Section, nor shall any inmate be represented by counsel in any proceeding held pursuant to this Section.~~

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

~~§ 90.47.05.Same: Appeal from Determination.~~

~~Any inmate whom the Transfer Review Committee has determined is to be transferred under these provisions may appeal such determination to the Superior Court of Guam. The review of the Superior Court shall not be de novo, and shall be limited to a review of the record to determine whether the Transfer Review Committee made its determination based upon a fair and full hearing. A determination may be reversed only upon a showing that the Committee abused its discretion in applying the rules and regulations to the facts which provided the basis for the recommended transfer, and that to allow the decision to stand would result in a miscarriage of justice. Notice of filing an appeal in accordance with this Subsection does not automatically stay an inmates transfer pending appeal.~~

CLRC COMMENT: According to DOC, the Transfer Review Committee has never met.

~~§ 90.48. Nursing Mothers Accommodations.~~

~~(a) The Director of the Department of Corrections must make reasonable efforts to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.~~

~~(b) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is *not* a threat to the infant's and the public's safety and welfare.~~

CLRC COMMENT: Consolidated into § 90.25 (d).

[NEW] § 90.48. Transfers Pursuant to Treaty.

When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, *I Maga'lahen Guåhan* (the Governor of Guam) or the Director of the Department of Corrections, if designated by *I Maga'lahi* (the Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. *I Maga'lahen Guåhan* (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.

CLRC COMMENT: Formerly 90.100, the only section in Article 5. Moved and consolidated under Article 1.

§ 90.49. Corrections Revolving Fund.

There is hereby created, within the Department of Corrections, a revolving fund called the 'Corrections Revolving Fund', which shall be established by the Department of Administration in accordance with the following provisions:

(a) All funds collected from the U.S. Marshal Service, the U.S. Immigration Service and the U.S. Bureau of Prisons for housing U.S. ~~prisoners~~ inmates and detainees, confinement of military personnel as agreed to in a Memorandum of Agreement between the United States Air Force and the Department of Corrections dated March 5, 2003, employees of the Department of Corrections for meals they purchase at the Department's dining facility, and the sale of hot garbage (pig slop) to private persons, shall be deposited into said Fund.

(1) Funds in the Corrections Revolving Fund may be used to purchase clothing for ~~prisoners~~ inmates and detainees, foodstuffs for the dining facility, galley catering services and, equipment, medical/dental supplies, reading glasses, prescription and over-the-counter medicines, sanitary/ hygiene supplies, and other pharmaceutical supplies for ~~prisoners~~ inmates and detainees, including payment for ~~prisoners~~ inmates and detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs and for ~~DepCor~~ Department of Correction Reservists.

(2) Expenditures from the Fund shall be approved by the Director ~~of Corrections~~ and posted on the Department's website.

(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund shall be maintained by the Director of Administration.

(4) Such accounting shall include and clearly identify the sources and amounts of all funds paid into or withdrawn from said Fund.

(b) The Corrections Revolving Fund shall be maintained separate and apart from all other funds of the government of Guam.

~~(c) *No* expenditures and encumbrances from the Corrections Revolving Fund shall be made without legislative approval through appropriation.~~

CLRC COMMENT: DOC requested repeal of subsection (c) because the requirement of legislative approval and appropriation made it administratively difficult to access the funds for DOC and inmate needs. There are already protections in place for expenditure and reporting/accounting of expenditure of the funds.

ARTICLE 2

WESTERN INTERSTATE CORRECTIONS COMPACT

§ 90.50. Purpose of Article.

The purpose of this Article is to enact enabling legislation for the enactment of the Western Interstate Corrections Compact, hereinafter referred to as the Compact. This Article may be cited as the Western Interstate Corrections Compact Enabling Act.

CLRC COMMENT: No change.

§ 90.51. Compliance to §§ 90.46-90.48.

No person shall be transferred to a correctional institution outside of Guam unless the applicable provisions of §§ 90.46 [Emergency Transfers of Inmates], or 90.47 [Non-emergency Transfers of Inmates, or 90.48 of this ~~Code~~ Chapter have first been complied with or unless such person has been legally sentenced to a term of imprisonment in such a correctional institution.

CLRC COMMENT: Non-substantive amendments.

§ 90.52. Compact Stated.

The Compact as contained herein is hereby enacted into law and entered into on behalf of Guam with any and all states legally joining therein in a form substantially as follows:

Western Interstate Corrections Compact

Article I
Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently, high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this Compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

Article II
Definitions

As used in this Compact, unless the context clearly requires otherwise:

(a) *State* means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) *Sending State* means a state party to this Compact in which conviction was had.

(c) *Receiving State* means a state party to this Compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) *Inmate* means a male or female offender who is under sentence to, or confined in, a prison or other correctional institution.

(e) *Institution* means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III
Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(3) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(4) Delivery and retaking of inmates.

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract herewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity, or provision, of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or installments as provided in the contract.

(c) The terms and provisions of this Compact shall be a part of any contract entered into by the authority of, or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV
Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this Compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the Territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the Territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this Compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of the sending state in institutions pursuant to this Com pact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any all proceedings had pursuant to the provisions of this Subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this Subdivision shall be borne by the sending state.

(g) An inmate confined pursuant to this Compact shall be released within the Territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its Territory.

(h) Any inmate confined pursuant to the terms of this Compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this Compact.

Article V
Acts Not Reviewable in Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this Compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this Compact through any and all states party to this Compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this Compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escape.

Article VI
Federal Aid

Any state party to this Compact may accept Federal aid for use in connection with any institution or program, the use of which is or may be affected by this Compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this Compact may participate in any such Federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

Article VII
Entry Into Force

This Compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this Article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington, and to Guam. Thereafter, this Compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this Compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this Article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

Article VIII
Withdrawal and Termination

This Compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the Compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its Territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this Compact.

Article IX
Other Arrangements Unaffected

Nothing contained in this Compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state of the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X
Construction and Severability

The preceding shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

CLRC COMMENT: No change.

§ 90.54. Director, Department of Corrections May Commit ~~Prisoner~~ Inmate Outside of Guam Pursuant to Terms of Compact.

The Director of Corrections may commit or transfer any inmate of a penal institution under his responsibility to any institution without Guam if Guam has entered into a contract or contracts for the confinement of inmates in such institution pursuant to Article III of the Compact.

CLRC COMMENT: Non-substantive amendments.

§ 90.56. All Agencies of Government of Guam Shall Enforce Compact.

The courts, departments, agencies and officers of Guam shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the Compact.

CLRC COMMENT: No change.

§ 90.58. Director, Department of Corrections May Hold Hearings as Required by Compact.

The Director of Corrections is hereby authorized and directed to hold such hearings as may be requested by any party state pursuant to Article IV(f) of the Compact.

CLRC COMMENT: No change.

§ 90.60. Governor May Contract to Implement Compact.

The Governor is hereby empowered to enter into such contracts as may be appropriate to implement the participation of the territory of Guam in the Compact pursuant to Article III thereof.

CLRC COMMENT: No change.

§ 90.62. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.

Where the inmate of an institution within Guam is committed or transferred to any institution outside Guam pursuant to § 90.54, and if such inmate is discharged in the receiving state by agreement pursuant to Article IV(g) of the Compact, where such inmate is a permanent resident of Guam the return transportation of such inmate to Guam shall be furnished by Guam.

CLRC COMMENT: No change.

§ 90.64. Severability.

The provisions of this Article shall be severable and if any phrase, clause, sentence, or provision of the Article is declared to be invalid or the applicability thereof to any state, agency, person or circumstances is held invalid, the validity of this Article and the applicability thereof to any other state, agency, person or circumstance shall with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this Article be reasonably and liberally construed.

CLRC COMMENT: No change.

§ 90.66. Effective Date.

This Article shall become effective upon the enactment of consent legislation by the United States Congress in accordance with Article VII of the Compact.

CLRC COMMENT: No change.

ARTICLE 3

INTERSTATE COMPACT ON JUVENILES

CLRC COMMENT: Recommendation to move this entire Article 3 to Title 19 Chapter 20 – Department of Youth Affairs.

~~§ 90.80. Purpose of Article: Title.~~

~~§ 90.82. Governor to Execute Compact: Compact Stated.~~

~~§ 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.~~

~~§ 90.80. Purpose of Article: Title.~~

~~The purpose of this Article is to enact enabling legislation for the Interstate Compact on Juveniles, hereinafter referred to as the Compact. This Article may be cited as the Interstate Compact on Juveniles Enabling Act.~~

~~§ 90.82. Governor to Execute Compact: Compact Stated.~~

~~The Governor of Guam is hereby authorized to execute and enter into a Compact on behalf of t Guam with any and all states, territories, Trust Territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico legally joined therein in a form substantially as follows:~~

~~Article I~~
~~Finding and Purposes~~

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II
Existing Rights and Remedies

That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III
Definitions

That, for the purposes of this Compact:

(a) *delinquent juvenile* means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court;

(b) *Probation or parole* means any kind of conditional release of juveniles authorized under the laws of the states party hereto;

(c) *Court* means any court having jurisdiction over delinquent, neglected or dependent children.

(d) *State* means any state, territory, and Trust Territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(e) *Residence or any variant thereof* means a place at which a home a regular place of abode is maintained.

Article IV
Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate; and shall be accompanied by two (2) certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardian ship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made shall hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, after a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent or a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile

~~is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provision of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue and order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who shall appoint counsel or guardian and litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such juvenile over the officer whom the court demanding him shall have appointed to receive him. The judge, however may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who shall appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state; or if he is suspended of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the law of that state.~~

~~(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation cost of such return.~~

~~(c) That juvenile as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.~~

~~Article V~~

~~Return of Escapes and Absconders~~

~~(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by the affidavit, shall be executed in duplicate, and shall be accompanied by two (2) certified copies of judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. The delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate~~

person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who shall appoint counsel or guardian and litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, such person may be taken into custody in any other state party to his Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, at will enable his detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation cost of such return.

Article VI
Voluntary Return Procedure

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without requisition in another state party to this Compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state to which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return; and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII
Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called 'receiving state') while on probation or parole and the receiving state shall accept such delinquent juvenile if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigation as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information

which may be of value and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in it discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but, if at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII
Responsibility for Costs

(a) That the provisions of Articles IV (b), V (b), and VII (d) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this Compact.

Article IX
Detention Practices

That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lock-up nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X
Supplementary Agreements

That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending

state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to this being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating state.

Article XI
Acceptance of Federal and Other Aids

That any state party to this Compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this Compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII
Compact Administrators

That the Chief Judge of the Superior Court of Guam shall be the Compact Administrator and who, acting jointly with like officers of other states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article XIII
Execution of Compact

That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV
Renunciation

That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six (6) months' notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereto shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six (6) months' renunciation notice of the present Article.

Article XV
Severability

That the provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters.

Article XVI
Out-of-State Confinement

(a) This Article, known as the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, is hereby enacted into law and entered into by this Territory with all other states legally joining therein the form substantially as follows:

(1) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the Territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(2) Escapees and absconders who could otherwise be returned pursuant to Article V of the Compact may be confined or reconfined in the receiving state pursuant to this Article. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such Article shall be made and furnished, but in place of

~~the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this Paragraph preliminary to disposition of the escapee or absconder.~~

~~(3) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this Article shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.~~

~~(4) As used in this Article: (1) sending state means sending state as the term is used in Article VII of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the Compact; (2) receiving state means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this Article.~~

~~(5) Every state which adopts this Article shall designate at least one of its institutions for delinquent juveniles as a Compact Institution and shall confine persons therein as provided in Paragraph (a) hereof unless the sending and receiving state in question shall make specific contractual arrangement to the contrary. All states party to this Article shall have access to Compact Institutions at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.~~

~~(6) Persons confined in ACompact Institutions@ pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said ACompact Institution@ for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.~~

~~(7) All persons who may be confined in a "ACompact Institution"@ pursuant to the provisions of this Article shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this Article be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.~~

~~(8) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this Compact may enter into supplementary agreements determining a different allocation of costs as among themselves.~~

~~(A) Rules and regulations necessary to effectuate the terms of this Article may be promulgated by the appropriate officers of those states which have enacted this Article.~~

~~(B) In addition to any institution in which the authorities of this Territory may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to this Article, confine or order the confinement of a delinquent juvenile in a Compact Institution within another party state.~~

~~§ 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.~~

~~Pursuant to the Compact the Presiding Judge of the Superior Court shall be the Compact Administrator and shall promulgate rules and regulations to carry out the terms of the Compact. The Compact Administrator may enter into agreements with appropriate officials of other states or territories pursuant to the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of Guam in facilitating the proper administration of the Compact or of any agreements entered into by Guam thereunder.~~

ARTICLE 4

PRISON INDUSTRIES

§ 90.90. Prison Industries, ~~Established.~~

~~(a) Prison Industries, Established~~. The Department ~~of Corrections~~ is hereby authorized to establish such prison industries as may be feasible to provide a means for inmates and detainees to receive job training and skills development; to provide opportunities for the earning of wages to be used to pay restitution to victims of crime, and payment of fines and court costs; and to provide additional means for funding certain recurring expenses of the Department. The Department *shall* separate and designate each prison industry to be established as occurring "within the secured perimeter" or occurring "outside the secured perimeter." This Act is *not* meant to replace the activities authorized by Chapter 84 of Article 1, Title 9, Guam Code Annotated, but *shall* be viewed as authorizing additional activities. This Chapter *shall not* supersede, *nor* affect any programs undertaken pursuant to Chapter 81 of this Title.

~~(b) Role of Corrections Advisory Council. The Corrections Advisory Council *shall* advise the Department on the suitability of any industry to be established, and may assist the Department in other matters relative to the establishment, operation, and maintenance of a chosen industry.~~

~~(c) Earnings Formula, established. Inmates shall be paid at no less than local prevailing wage rates as determined by the Director of Labor. Each inmate participating in a prison industry shall have all wages earned subject to this Earnings Formula:~~

~~(1) Twenty-five percent (25%) to the Criminal Injuries Compensation Fund.~~

~~(2) Twenty-five percent (25%) to payment of court-ordered fines, fees, and restitution. When such court-ordered fines, fees, and restitution have been satisfied, this percentage shall be applied to the Inmate's Account.~~

~~(3) Twenty-five percent (25%) to the Prison Industries Revolving Fund.~~

~~(4) Twenty-five percent (25%) to the Inmate's Account. Each participating inmate may elect to provide up to one hundred percent (100%) of the twenty-five percent (25%) for child and spousal support.~~

~~(5) In the event that the participating inmate does not owe any sum listed above, one hundred percent (100%) of earned wages shall be placed in the Inmate's Account.~~

~~(d) Eligibility to Participate. The Department *shall* establish criteria for determining an inmate's eligibility for participation in an established prison industry. All inmates shall be eligible for participation in an established prison industry consistent with eligibility requirements for other in-house prison rehabilitation programs unless otherwise ordered by a Court.~~

~~(e) In-kind Contributions and/or Credit for Services Allowed. The Department is authorized to enter into agreements with other government of Guam entities to receive in-kind contributions and/or a credit for services rendered in lieu of cash payments.~~

~~(f) Authority to Bid Granted. Notwithstanding the provisions of § 84.10(c) of Chapter 84, Article 1 of Title 9, Guam Code Annotated, the Department may submit its bid for the provision of services to a non-government entity, provided, that it includes as a component of its bid the costs for housing, utilities, food, supplies and any other item that would normally be considered as part of the overhead costs.~~

CLRC COMMENT: See comment to § 90.20, recommended for repeal above. This Council has never met.

§ 90.91. Prison Industries Revolving Fund.

(a) There is hereby created, within the Department ~~of~~ Corrections, a revolving fund called the "Prison Industries Revolving Fund" (Fund), which *shall* be established by the Department of Administration ~~in accordance with the following provisions:~~ .

~~(b) All funds collected from § 90.90(c) *shall* be deposited into said Fund.~~

~~(1) Funds in the Prison Industries Revolving Fund may be used to purchase clothing for prisoners and detainees, foodstuffs for the dining facility, galley catering services and equipment, medical/dental supplies, prescription and over-the-counter medicines, sanitary/hygiene supplies and other pharmaceutical supplies for prisoners and detainees, including, payment for prisoner-detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs for personnel specifically assigned to tasks involving Prison Industries, and for training of Department of Corrections personnel.~~

~~(2) Expenditures from the Fund *shall* be approved by the Director of Corrections and posted on the Department's website.~~

~~(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund *shall* be maintained by the Director of Administration.~~

~~(4) Such accounting *shall* include and clearly identify the sources and amounts of all funds paid into *or* withdrawn from said Fund.~~

~~(c) The Prison Industries Revolving Fund *shall* be maintained separate and apart from all other funds of the government of Guam.~~

~~(d) The Fund *shall* be subject to an annual audit, and its findings *shall* be posted on the department's website.~~

CLRC COMMENT: Use of the Prison Industries Revolving Fund should be addressed by departmental rule.

~~ARTICLE 5~~
~~TRANSFER PURSUANT TO TREATY~~

~~§ 90.100. [Untitled Section].~~

~~When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, *I Maga'lahen Guåhan* (the Governor of Guam) or the Director of the Department of Corrections, if designated by *I Maga'lahi* (the Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. *I Maga'lahen Guåhan* (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.~~

CLRC COMMENT: Moved to Article 1 of this Chapter and renumbered to ~~§ 90.26~~ § 90.48.

ARTICLE 6

CIVILIAN CORRECTIONS RESERVE PROGRAM

§ 90.201. Creation

(a) There is hereby created within the Department of Corrections (DOC) the Civilian Corrections Reserve Program (CCRP), which *shall* be headed by the Director of DOC (Director).

(b) The Director, subject to the advice and control of the Governor, *shall* be responsible for carrying out the purposes of this Article, and shall have such additional duties and responsibilities as are authorized herein, or as may be prescribed by the Governor.

CLRC COMMENT: No change.

§ 90.202. Functions and Duties.

(a) The general functions and duties of the CCRP *shall* be to provide backup manpower to protect the public from the destructive actions of law offenders through control and rehabilitation. It *may* provide staff services to the Judiciary, the Parole Board, probation officers, and interested agencies of the Executive Branch.

(b) The Director *shall* formulate a program whereby the CCRP *shall* adhere to the functions and duties herein prescribed. From time to time, the Director shall review and revise the functions and duties of the CCRP to ensure an amicable discharge of responsibilities and duties acknowledging the fact that their roles are an extension of the duties of the regular personnel.

CLRC COMMENT: No change.

§ 90.203. Recruitment.

(a) The Director *shall* recruit, on an entirely volunteer basis, local residents who desire to make available their services to assist the Department of Corrections in carrying out the function of protecting the public from the destructive actions of law offenders through control and rehabilitation.

(b) The Director *shall* further promulgate rules and regulations for recruitment regarding the age, health, and other requirements.

(c) Nothing in this Section shall prohibit the Director from recruiting a resident who is a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

CLRC COMMENT: No change.

§ 90.204. Training, Equipping, and Maintenance of Records.

(a) Training for the CCRP members *shall* be conducted pursuant to the provisions of the Peace Officer Standards and Training (POST) Commission in 17 GCA Chapter 51. Initial training requirements *shall* be identical to those required of DOC cadets.

(b) The Director *shall* maintain a roster of reservists who have received the training prescribed by 17 GCA Chapter 51. In order to maintain membership in the CCRP, each member must keep up with his scheduled training, and no reservist may remain in the CCRP if he or she is unable to keep up with or otherwise absorb the training. Additionally, basic supplies and equipment *shall* be provided to ensure a constant operability of the CCRP, including a continuing program for replacement.

(c) Any member of the CCRP who has *not* met the minimum qualifications/certifications for firearms safety and proficiency, physical fitness, recruitment clearances, and background checks *shall not* be allowed to serve in the CCRP.

CLRC COMMENT: No change.

§ 90.205. Reservist: Authority.

Whenever members of the CCRP are rendering assistance to DOC, such volunteers *shall* have the same powers, duties, rights (including coverage under the Worker's Compensation Act), privileges and immunities, as if they were paid, full-time members of the Department of Corrections, except that they *shall* earn recruitment credit for services performed as volunteers.

CLRC COMMENT: No change.

§ 90.206. Same: Allowance.

Each member of the CCRP who successfully completes probationary requirements as established by the Director, and who serves a minimum of twenty (20) hours to maintain good standing as a CCRP officer, and forty-two (42) hours per month, *shall* receive an allowance of Five Hundred Dollars ($500) per month to defray the cost of maintenance of their equipment and uniforms. The Department of Corrections *shall* identify funds within their department appropriations to satisfy the intent of this Section.

CLRC COMMENT: No change.

§ 90.207. Authorization for Full-Time CCRP Officers.

(a) The Department of Corrections (DOC) may employ a CCRP officer on a temporary, full-time basis, if such officer is an active member and has attained at least two thousand eighty (2,080) cumulative service hours when a critical need arises due to military activation of DOC officers or absence due to long-term disability status that has been certified by a medical doctor. DOC may exercise this authority provided its authorized budget for personnel is *not* exceeded. The CCRP officer *shall* return to reservist status pursuant to this Article when the incumbent returns from military service or long-term disability or at the discretion of the Director.

(b) When employed by DOC, a CCRP officer may only serve as an equivalent of Corrections Officer I and be compensated as a Corrections Officer I, Step I. Said CCRP officer *shall* be eligible to receive sick leave, be eligible for the

Government of Guam Health Insurance Program, and *shall not* be eligible for a stipend as a Reserve officer for the duration of their temporary employment with DOC.

(c) A CCRP reservist *shall* be offered permanent employment in the event a permanent position becomes available at DOC; provided, that the reservist meets all of the qualifications as prescribed in this Article. The Director *shall* promulgate rules and regulations that determine the order in which reservists are selected for permanent service.

(d) Notwithstanding 10 GCA § 77114(a)(1), a CCRP officer who serves as a Corrections Officer I, Step I under this Section may be a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

CLRC COMMENT: No change.

§ 90.208. Same: Eligibility and Oath.

(a) No person shall be a volunteer member of the CCRP established under this Article who advocates a change by force or violence in the constitutional form of the Government of the United States or of Guam, or the overthrow of any government in the United States by force, or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(b) Every volunteer *shall*, entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in Guam, which oath *shall* be substantially as follows:

> "I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the laws of Guam, against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter and I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the Government of the United States or of Guam by force or violence; and that during such time as I am a member of the Civilian Corrections Reserve Program I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or Guam by force or violence."

CLRC COMMENT: No change.

§ 90.209. Rules and Regulations: Recommendations.

The Director is authorized and empowered to recommend to the Governor for issuance as executive orders the making, amendment, and rescission of such orders, rules and regulations as may be necessary to carry out the provisions of this Article.

CLRC COMMENT: No change.

ARTICLE 7

THE DEPARTMENT OF CORRECTIONS MODERNIZATION ACT OF 2021

§ 90.301. Legislative Findings and Policy.

(a) *I Liheslaturan Guåhan* finds that the Department of Corrections (DOC) was established by Public Law 9-208 on July 18, 1968 within the executive branch of the Government of Guam. Before the enactment of Public Law 9-208, the Department of Corrections was first known as the Guam Penitentiary and through Executive Order 68-23, issued by Governor Manuel F.L Guerrero, the Penitentiary was transferred to the Department of Corrections, which was effective on November 1, 1968.

(b) The Department of Corrections is the only prison on Guam and provides services to local and federal agencies. DOC provides custodial care to individuals who are convicted of crimes and for those who are waiting judicial disposition. The environment of the prison must meet federal standards such as the National Prison Standards, Prison Rape Elimination Act (PREA), and the National Commission on Correctional Healthcare Standards (NCCHC), which ensures that the living conditions are decent and humane; but, with the issue of overcrowding and structural failures, DOC has been struggling to properly execute their mandates and comply with national standards. DOC is ensuring that it prevents any violations of the

Federal Consent Decree, which requires the Government of Guam to improve the living conditions of the inmates following the Civil Rights of Institutionalized Persons Act.

(c) The Adult Correctional Facility (ACF) in Mangilao is in its stages of failure due to age and lack of modern technology, which is affecting the operations and personnel of the correctional agency. The ACF was built to hold a maximum of three hundred (300) inmates and detainees; and currently, the population of Guam is growing as well as its crime rates, while DOC has outgrown its ACF. Over time, other DOC buildings were added to address the overcrowding issues of the ACF, and buildings used for rehabilitation and offices were re-designed to accommodate the rising population of prisoners. The Adult Correctional Facility is made of fifteen (15) housing units, which holds not only local inmates and detainees, but also immigration and federal detainees. The lack of proper facilities prevents DOC from properly providing rehabilitation to the inmates.

(d) The poor condition of the housing units of the prison is not cost effective or adequate to handle the growing prisoner population, and DOC recognized the difficulty in meeting its mandates of providing security, health, rehabilitation and welfare to the inmates and detainees under its care without compromising the well-being of its personnel. The main goal of the Department of Corrections is to provide rehabilitation to individuals who have been convicted of crimes and ensure that they become useful members of the community and to themselves.

(e) Furthermore, *I Liheslaturan Guåhan* finds that DOC has plans to build a new Department of Corrections facility with a bed capacity for one thousand (1,000) inmates to replace its current prison if funding was available. The new prison would provide the proper space to meet its mandates and the demands of its growing prisoner population. The Department of Corrections had started to draft an eighty (80)-year master plan, which will provide a phase-to-phase plan to construct a new Department of Corrections facility that will meet its construction goal of a bed capacity of one thousand (1,000) inmates. The Department of Corrections' goal is to ensure that all the issues on structural, technology, and security of the inmates and personnel are covered. The master plan also ensures that DOC meets all federal standards such as the National Prison Standards and PREA standards.

(f) Therefore, it is the intent of *I Liheslaturan Guåhan* to provide the Department of Corrections with the proper confinement of offenders in a controlled environment prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, which also promotes the safety of the people of Guam. I Liheslaturan Guåhan has identified funding to construct a new Department of Corrections Adult Correctional Facility through the Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million Dollars ($60,000,000) annually, of which an estimate of no more than Five Million Dollars ($5,000,000) will be allocated for the payments of the lease-back agreement.

(g) In an effort to overcome financing hurdles, and to provide DOC with the proper tools to meet its mandates, *I Liheslaturan Guåhan* desires to authorize the Government of Guam to enter into contract for the financing, design, construction, and long-term capital maintenance of a new Department of Corrections facility with private sector contractors who can provide long-term financing.

(h) To facilitate the financing, design, construction, and maintenance of a new Department of Corrections facility envisioned by this Act, the Government of Guam will be authorized to execute a lease agreement of existing property under its inventory for up to thirty (30) years on which the new Department of Corrections facility will be constructed.

(i) The lease of the Government of Guam's property will be to the contractor and/or the Guam Economic Development Authority, who will design and construct the new Department of Corrections facility and provide a funding for the design and construction through appropriations received from the reimbursement of the Earned Income Tax Credit for Fiscal Year 2022 and prospective appropriations from the General Fund, thereafter annually. Upon completion of the construction, the facilities and land will be leased back to the Government of Guam for a period not to exceed the initial ground lease to the contractor over which time the Government of Guam will amortize, as lease payments to the contractor, the cost of financing, design, construction, and related expenses of the new Department of Corrections.

(j) The contractor/developer will also be responsible for the capital maintenance and repair of the Department of Corrections constructed under this Act, which costs shall be paid by the Government of Guam as provided for under this Act. At the expiration of the lease-back period, the Government of Guam real property and the Department of Corrections constructed on the Government of Guam real property will revert to the Government of Guam with no further obligations to the contractor.

CLRC COMMENT: No change.

§ 90.302. Definitions.

For the purposes of this Article and unless otherwise specified, the following words and phrases are defined to mean:

(a) *Act* means Article 7 of Title 9, Chapter 90, Guam Code Annotated, which shall be known as "The Department of Corrections Modernization Act of 2021."

(b) *Contract* shall mean the design, construction, and financing contract entered by and between the Government of Guam and the contractor following negotiations on the response to the Request for Proposal.

(c) *Contractor/developer* shall mean the authorized entity which shall be the signatory on the contract and shall be fully responsible for carrying out the finance, design, construction, and maintenance of the new Department of Corrections. The contractor/developer may cooperate with another entity or entities in any manner the contractor/developer deems appropriate to provide for the financing, design, and construction of the new Department of Corrections envisioned by this Chapter.

(d) The *Department of Corrections Construction Committee* shall be chaired by the Administrator or Deputy Administrator of the Guam Economic Development Authority, and include the Director and Deputy Director of the Department of Corrections, the Director or Deputy Director of the Department of Public Works, the Director or Deputy Director of the Department of Land Management, the Director or Deputy Director of the Bureau of Statistics and Planning, the Director or Deputy Director of the Bureau of Budget and Management Research, and the Director or Deputy Director of the Department of Administration.

(e) *Correctional agency* shall mean the Department of Corrections.

(f) *Correctional facility* shall mean the Department of Corrections Adult Correctional Facility.

(g) *Lease* shall mean a lease from the Government of Guam itself or through the Department of Corrections to the contractor/developer entered at the time of the contract for the property.

(h) *Lease-back* shall mean the lease from the Guam Economic Development Authority and/or the contractor/developer to the Government of Guam itself or by and through the Department of Corrections of the newly constructed Department of Corrections.

(i) *Property* shall mean any property on which a new Department of Corrections is located.

CLRC COMMENT: No change.

§ 90.303. Authorization to Enter into Long-Term Leases.

(a) For the purpose of facilitating the financing, design, construction, and maintenance of the new Department of Corrections encompassed by this Act, the Government of Guam is authorized to lease property that will be used for the new Department of Corrections, as required, to the contractor/developer and/or the Guam Economic Development Authority; provided, such property is in the inventory of the Government of Guam.

(b) The Government of Guam is also authorized to lease-back from the contractor/developer and/or the Guam Economic Development Authority the property for a period mutually agreed upon between the Government of Guam and the contractor/developer and/or the Guam Economic Development Authority as may be reasonably necessary to amortize the lease-back period of no more than thirty (30) years the cost associated with the design, construction, and maintenance of the new Department of Corrections. In no event shall the end of such lease-back period be structured as an annually renewable lease with a provision for automatic renewals to the extent that pledged revenue under § 90.308 is available. The lease-back shall not be construed as a debt under any applicable debt limitation under the Organic Act of Guam or Guam law.

CLRC COMMENT: No change.

§ 90.304. Identification Projects and Procurement.

(a) The Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall utilize the program study of the correctional agency to identify and prioritize potential projects to be completed.

(1) The list of projects identified by the Program Study of the correctional agency shall be included in one (1) Request for Proposal developed by the Guam Economic Development Authority.

(A) Upon receipt of the Program Study, the Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall solicit Request for Proposals (RFP) for a contractor/developer, in compliance with the Guam Procurement Law, for the financing, design, and construction of the Department of Corrections, according to the needs of the correctional agency and consistent with this Article.

(B) GEDA is also hereby authorized to solicit the services for a Program Management Office, which shall include, but not be limited to, creating scopes of work, coordinating projects and performance targets, conducting periodic quality control reviews, assuring timely product generation and response, and managing the project to produce a quality product within the budget and schedule.

(2) The choice of the contractor/developer shall be made by the Department of Corrections Construction Committee. The committee shall assess the prior performance of the contractor/developer on similar projects, and shall be free to disqualify any contractor/developer that does not have a successful record of project completion on Guam or any similar isolated locality.

(b) The Committee shall also specifically consider the contractor/developer's ability and performance with regards to the financing, development and construction of a correctional facility on Guam or any similar isolated locality.

(c) The selection of a contractor/developer shall be based upon the proposal that delivers the lowest cost value for Guam in meeting the objectives of the correctional agency.

(d) GEDA shall issue an RFP within thirty (30) days after the conclusion of its Program Study, in consultation with the Department of Corrections for the design, construction, and maintenance of the correctional facilities.

CLRC COMMENT: No change.

§ 90.305. Responsibility of Contractor/Developer.

The contract shall require that the contractor/developer be responsible for all costs, expenses, and fees of any kind or nature, associated with the design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of the Department of Corrections to the extent provided by GEDA in consultation with the Department of Corrections in the Request for Proposal. The lease may, for the purposes herein, provide that its term shall be extended for a period not to exceed the shorter of ten (10) years beyond the original term of the lease-back, or such period of time as is necessary to repay in full any financing arranged pursuant to § 90.309 of this Article.

CLRC COMMENT: No change.

§ 90.306. Contractual Safeguards.

Prior to undertaking the work of finance, design, construction, and maintenance of the new Department of Corrections, the Guam Economic Development Authority, in consultation with the Department of Corrections and the contractor/developer, shall negotiate and enter into a binding construction contract to build the new Department of Corrections in accordance with Guam Building Code under 21 GCA Chapter 67, Guam Fire Safety Codes and any other applicable requirements. The construction contract shall contain contractual obligations typically found in Government of Guam construction contracts, including, but not limited to:

(a) warranties;

(b) liquidated damages;

(c) performance and payments bonds;

(d) indemnity;

(e) insurance;

(f) standard specifications;

(g) technical specifications;

(h) progress schedule;

(i) maintenance;

(j) compliance with Guam labor regulations;

(k) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;

(l) compliance with Public Law 28-98: restriction against contractors employing convicted sex offenders to work at Government of Guam venues; and

(m) the 2017 Guam Tropical Energy Code.

The contract must be approved as to form and legality by the Attorney General of Guam.

CLRC COMMENT: No change.

§ 90.307. Assignments.

To facilitate the purpose of this Act and provide security for the holders of any financing instruments issued pursuant to this Act, the contractor/developer may assign, without the need of the consent of the Guam Economic Development Authority, the contract, the lease and the lease-back to any underwriter, trustee, or other party as appropriate to facilitate the contractor/developer financing.

CLRC COMMENT: No change.

§ 90.308. Pledge or Reservation of Revenues.

(a) Rental payments under the lease and the lease-back may be secured by a pledge or other reservation of revenues collected by the Government of Guam from the following:

(1) The sum of no more than Five Million Dollars ($5,000,000) from the revenues received pursuant to 11 GCA Chapter 42, Earned Income Tax Credit will be available for Fiscal Year 2022 only.

(2) The sum of no more than Five Million Dollars ($5,000,000) from the General Fund shall be appropriated annually thereafter.

(3) The Governor of Guam may use federal funds that are made available to the Government of Guam by the United States Federal Government for the financing, design, construction, and maintenance of the new Department of Corrections facility.

(4) The use of other financing options is authorized for the purpose of this Act, including, but not limited to, loans, grants, bond financing, and other alternate funding options, subject to legislative approval.

(b) Any amounts reserved or pledged as provided in this Section shall be subject to annual appropriations for the purpose of making lease-back payments. The revenues pledged or reserved and thereafter received by the Government of Guam or by any trustee, depository, or custodian shall be deposited in a separate account and shall be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further action, and such reservation or the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need be recorded.

CLRC COMMENT: No change.

§ 90.309. Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.

(a) To minimize the financing cost to the Government of Guam, financing utilized by the contractor/developer to fund the design, construction, and maintenance of the Department of Corrections shall be through tax-exempt obligations, taxable bond obligation, or other financial instruments; provided, such financing is available at interest rates determined by the Guam Economic Development Authority to be reasonable and competitive. The Guam Economic Development Authority shall be the issuer of any financial instruments or obligations unless the Guam Economic Development Authority waives its right to serve as the issuer of financial instruments or obligations. Alternatively, the contractor may use an alternative method of financing, including, but not limited to, a short-term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States of America if such financing will better serve the needs of the people of Guam. Such alternative financing shall be approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure that the Government of Guam pays the lowest possible interest rate so that the cost of the Government of Guam's financing of the design and construction of the Department of Corrections, amortized through the lease-back payments from the Government of Guam to GEDA and or the contractor/developer, will be lower than regular commercial rates.

(b) *I Liheslaturan Guahan*, pursuant to § 50103(k) of Chapter 50, Title 12, Guam Code Annotated, hereby authorizes the Guam Economic Development Authority to issue one or more additional series of tax-exempt and/or taxable obligations (in any case, the "bonds") for the purpose of financing the Department of Corrections Adult Correctional Facility, in an aggregate principal amount not to exceed Eighty Million Dollars ($80,000,000) for the following purposes:

(1) to finance the design, construction, and/or the maintenance of the Department of Corrections Adult Correctional Facility;

(2) to fund a deposit to a debt service reserve fund;

(3) to fund capitalized interest with respect to the bonds; and

(4) to pay expenses relating to the authorization, sale, and issuance of the bonds, including without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks, or other financial institutions providing credit enhancement fees, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale, and delivery of the bonds, subject to the following additional conditions:

(A) The terms and conditions of the bonds shall be as determined by the Guam Economic Development Authority by the execution of a certificate, trust agreement or indenture authorizing the issuance of the bonds; provided, however, that such terms and conditions shall be consistent with this Section, that the bonds shall have a final maturity not to exceed thirty (30) years; and an interest rate not to exceed seven percent (7%).

(B) No bonds authorized by this Section shall be sold until the Board of Directors of Guam Economic Development Authority has approved the sale by resolution, as provided in Chapter 50 of Title 12, Guam Code Annotated.

(C) The issuance of bonds pursuant to this Section shall not be subject to the approval of the voters of Guam.

CLRC COMMENT: No change.

§ 90.310. Prison IT, Building, and Security Management System.

(a) For the purpose of ensuring the long-serving duration of the Department of Corrections facility, GEDA may include in the specifications for the new correctional facility, the requirement for a prison information management system, a security and surveillance system, and a building management system. These systems identified must be done in consultation with the Department of Corrections and comply with the federal mandates related to prison records and to foster compliance with the Federal Standards for Prisons and Jails.

(b) GEDA, in consultation with the Department of Corrections, may determine the specifications for such systems based on comprehensive, state-of-the-art technology generally accepted within the United States Prison Industry in connection with the development for a new Department of Corrections facility. The specifications shall require that all systems are designed by the same software developer so as to ensure the delivery of the rehabilitation to the inmates.

(c) In order to ensure immediate response to system downtimes or failure, GEDA may include in the specifications the requirement that the provider of these systems have a local Guam Office and service technicians stationed on Guam.

CLRC COMMENT: No change.

§ 90.311. Utilities and Routine Maintenance and Repair.

The contractor/developer shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone, and cable and all maintenance and repair and exterior groundskeeping and landscaping and upkeep of the Department of Corrections.

CLRC COMMENT: No change.

§ 90.312. Maintenance Fund.

The contract with the contractor/developer, and the lease-back shall provide that all capital maintenance and repair of the Department of Corrections facility be performed by the contractor/developer. The contractor/developer shall provide sufficient funding for a separate maintenance fund for this purpose; sufficient funds for this purpose shall be defined as the cost of capital maintenance and repair for the remaining period of the lease agreement with the Government of Guam after

the completion of the Department of Corrections. The maintenance fund shall be used exclusively for the purpose of capital maintenance and repair and shall be in an interest-bearing account segregated from other funds held in escrow.

CLRC COMMENT: No change.

§ 90.313. Rules and Regulations.

The Guam Economic Development Authority, in consultation with the Department of Corrections, may promulgate rules and regulations pursuant to the Administrative Adjudication Law as necessary to implement the provisions of this Article.

CLRC COMMENT: No change.

§ 90.314. Financial Plan Required.

GEDA shall prepare a financial plan in accordance with the following:

(a) At a minimum, the financial plan shall include a comprehensive report of the associated costs and sources of revenues required for the duration of the Department of Corrections Modernization Act of 2021 (Project). The financial plan should reflect the total Project cost and any phases that represent the Project development priorities. All anticipated Project revenues shall be matched and allocable to the anticipated Project costs and shall detail its impact on the overall debt ceiling.

(b) The financial plan shall be submitted to *I Maga'hågan Guåhan* and transmitted to the Speaker of *I Liheslaturan Guåhan.* No solicitation of Request For Proposal or invitation for bid authorized to effectuate the requirements of this Act may be issued until the financial plan is delivered to the Speaker of *I Liheslaturan Guåhan.*

CLRC COMMENT: No change.

CHAPTER 91

INFANT CHILD'S RIGHT TO LIFE ACT

CLRC COMMENT: No change.

§ 91.01. Title.

This Act may be known and cited as the "Infant Child's Right to Life Act."

CLRC COMMENT: No change.

§ 91.02. Legislative Findings and Purpose.

(a) *I Liheslaturan Guåhan* finds that:

(1) All children, no matter their age, have the right to life. Guam has a paramount interest in protecting all human life.

(2) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of Guam.

(3) Guam must assert its interest in protecting an infant whose live birth occurred as the result of an abortion.

(4) Without proper legal protection, newly-born infants who survive abortions could be denied proper life-saving or life-sustaining medical treatment and left to die.

(b) Accordingly, it is the purpose of this Act to ensure the protection and promotion of the health and wellbeing of all infants born alive in Guam. Therefore, this Act mandates that healthcare providers give medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born alive infants.

CLRC COMMENT: No change.

§ 91.03. Definitions.

For the purposes of this Act only:

(a) Abortion means the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(b) Born alive or live birth means the complete expulsion or extraction of an infant from his or her mother, regardless of the state of gestational development, that, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including, but not limited to, one or more of the following:

(1) breathing;

(2) a heartbeat;

(3) umbilical cord pulsation; or

(4) definite movement of voluntary muscles.

(c) Consent means knowledge of and explicit or implicit agreement to or instruction to perform a violation of this Act.

(d) Facility or medical facility means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(e) Infant, for the purposes of this Act, and as used in this Act, means a child of the species *homo sapiens* that has been completely expulsed or extracted from its mother, regardless of the stage of gestational development, until the age of thirty (30) days post birth. An infant is also a human being for purposes of Chapter 16 of Title 9, Guam Code Annotated.

(f) Premature or preterm means occurring prior to the thirty-seventh (37th) week of gestation.

CLRC COMMENT: No change.

§ 91.04. Requirements and Responsibilities.

(a) A person shall not deny or deprive an infant of nourishment with the intent to cause or allow the death of the infant for any reason.

(b) A person shall not deprive an infant of medically appropriate and reasonable medical care and treatment or surgical care.

(c) The requirements of this Section shall not be construed to prevent an infant's parent(s) or guardian(s) from refusing to give consent to medical treatment or surgical care which is not medically necessary or reasonable, including care or treatment which either:

(1) is not necessary to save the life of the infant;

(2) has a potential risk to the infant's life or health that outweighs the potential benefit to the infant of the treatment or care; or

(3) is treatment that will do no more than prolong the act of dying when death is imminent.

(d) The physician performing an abortion must take all medically appropriate and reasonable steps to preserve the life and health of an infant. If an abortion performed in a hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant, inform the mother of the live birth, and request the transfer of the infant to a resident, on-duty or emergency care physician, who shall provide medically-appropriate and reasonable medical care and treatment to the infant. If an abortion performed in a facility other than a hospital results in a live birth, a physician attending the abortion shall provide immediate medical care and treatment to the infant and call 9-1-1 for an emergency transfer of the infant to a hospital that shall provide medically-appropriate and reasonable care and treatment to the infant.

(e) If the physician described in Subsection (d) of this Section is unable to perform the duties in that Subsection because he is assisting the woman on whom the abortion was performed, then an attending physician's assistant, nurse, or other licensed healthcare provider must assume the duties outlined in that Subsection.

(f) Any infant, including one born in the course of an abortion procedure, shall be treated as a legal person under the laws of Guam, with the same rights to medically-appropriate care and treatment, and birth and death (if death occurs) certificates shall be issued accordingly.

(g) If, before the abortion, the mother and the father have stated in writing that they do not wish to keep the infant in the event that the abortion results in a live birth, and this writing is not retracted before the abortion, the infant, if born alive, shall immediately upon birth become a ward of Guam.

(h) No person may use any infant for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of the premature born alive infant.

CLRC COMMENT: No change.

§ 91.05. Criminal Penalties.

(a) Any physician, nurse, or other licensed healthcare provider who intentionally with premeditation, or intentionally, or knowingly, or recklessly, or by criminal negligence fails to provide reasonable and medically-appropriate and reasonable care and treatment to an infant in the course of an abortion shall be guilty of a criminal homicide, as defined in Chapter 16 of Title 9, Guam Code Annotated, and may be punished in accordance with that Chapter. The mother will not be liable, criminally or civilly, for actions of a physician, nurse, or other licensed healthcare provider, in violation of this Act to which she did not give her consent.

(b) Any violation of § 91.04(h) of this Act concerning the research use of a born-alive infant is a felony of the first degree, and upon conviction may be punished in accordance with Article 2, Chapter 80 of Title 9, Guam Code Annotated.

CLRC COMMENT: No change.

§ 91.06. Civil and Administrative Action.

In addition to whatever remedies are available under the common or statutory laws of Guam, failure to comply with the requirements of this Act shall:

(a) provide a basis for a civil action for compensatory and punitive damages. Any conviction under this Act shall be admissible in a civil suit as *prima facie* evidence of a failure to provide medically appropriate and reasonable care and treatment to a born-alive infant. Any civil action may be based on a claim that the death of or injury to the born-alive infant was a result of simple negligence, gross negligence, wantonness, willfulness, intentional conduct, or another violation of the legal standard of care;

(b) provide a basis for professional disciplinary action for the suspension or revocation of any license of physicians, licensed and registered nurses, or other licensed or regulated persons. Any conviction of any person for any failure to comply with the requirements of this Act shall result in the automatic suspension of his or her license for a period of at least one year, and shall be reinstated after that time only under such conditions as shall be required to ensure compliance with this Act; and

(c) provide a basis for recovery for the parent(s) of the infant, or the parent(s) or guardian(s) of the mother if the mother is a minor, for the wrongful death of the infant whether or not the infant was viable at the time abortion was performed.

CLRC COMMENT: No change.

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§ 60109. Concealed Firearms.

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.

CLRC COMMENT: 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).

§ 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.

CLRC COMMENT: Amendments to alleviate issues with military members registering firearms brought into Guam. Grace period is consistent with the grace period in § 60110.1.

§ 60110.1. Firearms.

A grace period for payment of fees due for renewal of registration or for new registration for a firearm for a 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.

CLRC COMMENT: Amendments for consistency with changes recommended for § 60110.

EXHIBIT B

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION
NOTICE OF ERRATA AND REVISIONS
TO CLRC INTERIM REPORT OF JUNE 13, 2025

SUBMITTED FEBRUARY 6, 2026

Doc. No. 38GL-26-1904

Outlook

Messages & Communications Doc. No. 38GL-26-1903 through 1908.

From 38th Committee On Rules <committeeonrules@guamlegislature.gov>
Date Tue 2/10/2026 10:01 AM
To Guam Legislature Clerks <clerks@guamlegislature.gov>
Cc Frank Blas Jr. <speakerblas@guamlegislature.gov>

6 attachments (13 MB)
21026COMM Doc. No. 38GL-26-1903.pdf; 21026COMM Doc. No. 38GL-26-1904.pdf; 21026COMM Doc. No. 38GL-26-1905.pdf; 21026COMM Doc. No. 38GL-26-1906.pdf; 21026COMM Doc. No. 38GL-26-1907.pdf; 21026COMM Doc. No. 38GL-26-1908.pdf;

Håfa Adai Clerk's Office,

Please see attached, **Messages & Communications Doc. No. 38GL-26-1903 through 1908** for processing:

	38GL-26-1902	Bureau of Budget and Management Research	American Rescue Plan Act of 2021 and Infrastructure Investment and Jobs Act Allocation Reports for period ending January 31, 2026*
√	**38GL-26-1903**	Civil Service Commission	Board Meeting Packet for February 5, 2026*
√	**38GL-26-1904**	Judiciary of Guam	Transmittal of the Guam Criminal Law and Procedure Review Commission Notice of Errata and Revisions to the June 13, 2025, Interim Report*
√	**38GL-26-1905**	Guam Waterworks Authority	FY2026 1st Quarter Staffing Pattern*
√	**38GL-26-1906**	Office of the Attorney General	Prior Years Obligations to pay Guam Home Center in the total amount of $387.67.
√	**38GL-26-1907**	Guam Memorial Hospital Authority	Notification of Temporary Assignment or Detail – Josephine O. Dagupan, Central Service and Supply Supervisor, 01/12/26.
√	**38GL-26-1908**	Guam Memorial Hospital Authority	Notification of Temporary Assignment or Detail – Eleanor M. San Nicolas, Chief of Environmental Services, 01/15/26.

Kindly reply to this email

Si Yu'os ma'åse',

Marie Crisostomo

Committee on Rules Assistant

COMMITTEE ON RULES

Vice Speaker V. Anthony Ada, Chairperson

I Mina'trentai Ocho Na Liheslaturan Guåhan

38th Guam Legislature

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Messages and Communications 38GL-26-1904*

2 messages

Speaker Frank Blas Jr. <speakerblas@guamlegislature.gov> Mon, Feb 9, 2026 at 12:17 PM
To: 38th Committee On Rules <committeeonrules@guamlegislature.gov>, Sabrina Salas Matanane <office.senatorbri@guamlegislature.gov>

Håfa Adai,

Please see attached M&C Doc. No. 38GL-26-1904

38GL-26-1904	Judiciary of Guam	Transmittal of the Guam Criminal Law and Procedure Review Commission Notice of Errata and Revisions to the June 13, 2025, Interim Report*

Si Yu'os Ma'åse'

Bernice Rivera

Administrative Assistant

Office of Speaker Frank F. Blas, Jr.

I Mina'trentai Ocho na Liheslaturan Guåhan 38th Guam Legislature

Guam Congress Building, 163 Chalan Santo Papa, Hagatña

(671)969-6456
speakerblas@guamlegislature.gov

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---------- Forwarded message ---------
From: **Lisa C. Ibanez** <libanez@guamcourts.gov>
Date: Fri, Feb 6, 2026 at 3:01 PM
Subject: CLRC's Transmittal of Notice of Errata and Revisions to the Interim Report
To: Speaker Frank Blas, Jr. <speakerblas@guamlegislature.gov>
Cc: Andrew S. Quenga <aquenga@guamcourts.gov>, Jonathan R. Quan <jrquan@guamcourts.gov>

Hafa Adai Speaker Blas,

Enclosed, please find a copy of the CLRC's Notice of Errata and Revisions to the Interim Report approved at its plenary meeting of January 29, 2026.

Should you have any questions or require further information please do not hesitate to contact our office.

Senseramente,

Lisa C. Ibanez
Administrative Support
Guam Criminal Law and Procedure Review Commission
T: (671) 475-3278 ext. 252 E: libanez@guamcourts.gov

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2 attachments

THE GUAM LEGISLATURE

Speaker Frank Blas Jr. <speakerblas@guamlegislature.gov>

CLRC's Transmittal of Notice of Errata and Revisions to the Interim Report

3 messages

Lisa C. Ibanez <libanez@guamcourts.gov> Fri, Feb 6, 2026 at 3:01 PM
To: "Speaker Frank Blas, Jr." <speakerblas@guamlegislature.gov>
Cc: "Andrew S. Quenga" <aquenga@guamcourts.gov>, "Jonathan R. Quan" <jrquan@guamcourts.gov>

Hafa Adai Speaker Blas,

Enclosed, please find a copy of the CLRC's Notice of Errata and Revisions to the Interim Report approved at its plenary meeting of January 29, 2026.

Should you have any questions or require further information please do not hesitate to contact our office.

Doc Type: 38GL-26-1904
OFFICE OF THE SPEAKER
FRANK F. BLAS, JR.
February 6, 2026
Time: 3:01 PM
Received:

Senseramente,

Lisa C. Ibanez
Administrative Support
Guam Criminal Law and Procedure Review Commission
T: (671) 475-3278 ext. 252 E: libanez@guamcourts.gov

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2026 Errata Transmittal Spkr Blas.pdf
1204K

Speaker Frank Blas Jr. <speakerblas@guamlegislature.gov> Mon, Feb 9, 2026 at 11:30 AM
To: "Lisa C. Ibanez" <libanez@guamcourts.gov>
Cc: "Andrew S. Quenga" <aquenga@guamcourts.gov>, "Jonathan R. Quan" <jrquan@guamcourts.gov>

Håfa Adai Lisa,

Confirming receipt of your email.

Si Yu'os Ma'åse'

Bernice Rivera

Administrative Assistant

Office of Speaker Frank F. Blas, Jr.

I Mina'trentai Ocho na Liheslaturan Guåhan 38th Guam Legislature

Guam Congress Building, 163 Chalan Santo Papa, Hagatña

(671)969-6456
speakerblas@guamlegislature.gov

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[Quoted text hidden]

---

speakerblas@guamlegislature.gov <speakerblas@guamlegislature.gov> Mon, Feb 9, 2026 at 11:30 AM
To: libanez@guamcourts.gov, libanez@guamcourts.gov

Your message

To: libanez@guamcourts.gov
Subject: CLRC's Transmittal of Notice of Errata and Revisions to the Interim Report
Sent: 2/6/26, 3:01:51 PM GMT+10

was read on 2/9/26, 11:30:15 AM GMT+10

2026 Errata Transmittal Spkr Blas.pdf
1204K

38GL-26-1904.pdf
1178K

38th Committee On Rules <committeeonrules@guamlegislature.gov> Mon, Feb 9, 2026 at 2:36 PM
To: "Speaker Frank Blas Jr." <speakerblas@guamlegislature.gov>

Håfa Adai,

Received, and thank you

Si Yu'os ma'åse',

Marie Crisostomo

Committee on Rules Assistant

COMMITTEE ON RULES

Vice Speaker V. Anthony Ada, Chairperson

I Mina'trentai Ocho Na Liheslaturan Guåhan

38th Guam Legislature

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[Quoted text hidden]

HON. KATHERINE A. MARAMAN
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

February 6, 2026

VIA EMAIL

Honorable Frank Blas, Jr.,

SUBJECT: Transmittal of the Guam Criminal Law and Procedure Review Commission Notice of Errata and Revisions to the June 13, 2025, Interim Report

Håfa Adai Speaker Blas,

Transmitted herewith is the Guam Criminal Law and Procedure Review Commission ("CLRC") Notice of Errata and Revisions to the CLRC Interim Report June 13, 2025.

This Notice of Errata and Revisions sets forth sections identified in the Interim Report affected by legislation enacted subsequent to the submission of the Interim Report on June 13, 2025, as well as a small number of clerical errors in certain sections of the Interim Report, and makes necessary revisions to the Interim Report. This Notice of Errata and Revisions was approved by the Criminal Law and Procedure Review Commission at its Plenary Meeting of January 29, 2026.

Senseramente,

Andrew S. Quenga
Executive Director

38GL-26-1904
Messages and Communications
RECEIVED
COMMITTEE ON RULES
February 9, 2026
12:17 p.m.
Marie Crisostomo

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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. KATHERINE A. MARAMAN
CHIEF JUSTICE
HON. ALBERTO C. LAMORENA, III
PRESIDING JUDGE

HON. JONATHAN R. QUAN
CHAIRMAN
ANDREW SERGE QUENGA
EXECUTIVE DIRECTOR

CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION NOTICE OF ERRATA AND REVISIONS TO THE CLRC INTERIM REPORT OF JUNE 13, 2025:

INTRODUCTION

Pursuant to Public Law 36-119[1], the Guam Criminal Law and Procedure Review Commission ("CLRC") submitted to I Liheslaturan Guåhan, on June 13, 2025, an Interim Report setting forth its findings and recommendations for amendments to selected chapters of Title 9 of the Guam Code Annotated. The Interim Report identified recommended statutory changes in blackline (markup) format and included CLRC commentary explaining the proposed amendments or noting where no changes were recommended.

Following submission of the Interim Report, I Liheslaturan Guåhan enacted legislation amending certain Title 9 sections addressed in the Interim Report. In addition, the CLRC identified clerical, typographical, and formatting errors within the Interim Report that require correction. This Notice of Errata and Revisions is submitted to correct those errors and to revise the Interim Report recommendations as necessary to account for intervening legislative amendments enacted after June 13, 2025.

[1] Establishing the CLRC and directing it to conduct a comprehensive and systematic review of Guam's criminal laws.

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SECTIONS AFFECTED

The table below summarizes sections that are covered in this report and their errata.

SECTION	ERRATA
§ 1.18. Classes of Crimes.	Correction made by Compiler of Laws
§ 1.19. Felonies Defined and Classified.	Correction made by Compiler of Laws
§ 1.20. Relationship of Code to Other Laws; Contempts, Penalties and Remedies.	Correction made by Compiler of Laws
§ 16.50. Manslaughter Defined and Classified.	Clerical
§ 19.82. Interfering with the Reporting of Criminal Sexual Conduct; Defined and Punished.	New section subsequently added by the Legislature in P.L. 38-070 (Oct. 17, 2025)
§ 25.10. Definitions.	New subsections subsequently added by the Legislature in P.L. 38-016 (June 17, 2025)
§ 25.15. First Degree Criminal Sexual Conduct.	Subsequent amendment by the Legislature in P.L. 38-016 (June 17, 2025)
§ 25.20. Second Degree Criminal Sexual Conduct.	Subsequent amendment by the Legislature in P.L. 38-016 (June 17, 2025)
§ 25.25. Third Degree Criminal Sexual Conduct.	Subsequent amendment by the Legislature in P.L. 38-083 (Dec. 20, 2025)
§ 25.50. Interfering with the Reporting of Criminal Sexual Conduct.	New section subsequently added by the Legislature in P.L. 38-070 (Oct. 17, 2025)
§ 31.30. Child Abuse; Defined & Punished.	Clerical
§ 34.50. Criminal Mischief; Defined.	Clerical
§ 34.60. Criminal Mischief; Punished.	Clerical
§ 34.70. Graffiti Prohibited.	Subsequent amendment by the Legislature in P.L. 38-078 (Dec. 16, 2025)
§ 70.65. Defenses; Exceptions.	Clerical

ERRATA AND REVISIONS

Errata and recommended revisions are as indicated below within the quoted text.

1. § 1.18. Classes of Crimes.

ERRATA. Reference to "territory" already removed by the Compiler of Laws for consistency with 1 GCA § 420.

REVISION. Replace with current version and revise the CLRC Comment to "No change" as follows:

"§ 1.18. Classes of Crimes.

(a) An offense defined by this Code or by any other statute of Guam, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors or petty misdemeanors.

(b) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which, apart from an extended term, is in excess of one year.

(c) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto.

(d) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(e) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto or if it is defined by a statute other than this Code which now provides that person convicted thereof may be sentenced to imprisonment for a maximum term of less than one year.

(f) An offense defined by this Code or by any other statute of Guam constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(g) An offense defined by any statute of Guam other than this Code shall be classified as provided in this Section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

CLRC COMMENT: No change. Section revised in Notice of Errata and Revisions approved by the CLRC on January 29, 2026."

§ 1.19. Felonies Defined and Classified.

ERRATA. Reference to "territory" already removed by the Compiler of Laws for consistency with 1 GCA § 420.

REVISION. Replace with current version and revise the CLRC Comment to "No change" as follows:

"§ 1.19. Felonies Defined and Classified.

(a) Felonies defined by this Code are classified, for the purpose of sentence, into three degrees, as follows:

(1) felonies of the first degree;

(2) felonies of the second degree;

(3) felonies of the third degree.

Any crime declared to be a felony, without specification of degree, is of the third degree.

(b) Notwithstanding any other provision of law, a felony defined by any statute of Guam other than this Code shall constitute for the purpose of sentence a felony of the third degree.

CLRC COMMENT: No change. Section revised in Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to reflect Compiler of Law revisions."

§ 1.20. Relationship of Code to Other Laws; Contempts, Penalties and Remedies.

ERRATA. Reference to "territory" already removed by the Compiler of Laws for consistency with 1 GCA § 420.

REVISION. Replace with current version and revise the CLRC Comment to "No change" as follows:

"§ 1.20. Relationship of Code to Other Laws; Contempts, Penalties and Remedies.

(a) No conduct constitutes an offense unless it is a crime or violation under this Code or other statute of Guam.

(b) The provisions of this Code shall apply to offenses defined by other statutes, unless otherwise expressly provided or unless the context otherwise requires.

(c) Nothing in this Code shall affect the power of a court to punish contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(d) Nothing in this Code shall bar or suspend any liability for damages, penalty, forfeiture, or other remedy otherwise authorized by law to be recovered or enforced in any civil action or proceeding, for any conduct punishable by this Code.

CLRC COMMENT: No change. Section revised in Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to reflect Compiler of Law revisions."

2. § 16.50. Manslaughter Defined and Classified.

ERRATA. Interim Report clerical errors in this section.

RECOMMENDATION. Replace with corrected section as follows:

"**§ 16.50. Manslaughter Defined and Classified.**

(a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or

emotional disturbance for which there is reasonable explanation or excuse. ~~(~~The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.~~)~~; or

(3) death is indirectly or proximately caused, such as an accident, by the illegal use of a Schedule I or Schedule II Controlled Substance, as defined by Chapter 67 of this Title, to a person under the influence of such controlled substance; or ~~. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance indirectly or proximately causes the death of such person, is guilty of manslaughter. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.~~

(4) death of a person who is eighteen (18) years or older results from a knowing or willing transfer or sale of a Schedule I or Schedule II controlled substance, where such controlled substance proximately causes the death of such person.

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

CLRC COMMENT: Parentheses in (a)(2) removed for clarity. Schedule II controlled substances added in (a)(3) to include crystal methamphetamine. Other recommended amendments are intended to correct loopholes for persons exactly 18 years old and for healthcare professionals. Section revised in Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to correct clerical errors."

3. § 19.82. Interfering with the Reporting of Criminal Sexual Conduct; Defined and Punished.

ERRATA. This is a new section added by P.L.38-70:2 on October 17, 2025 *after* the Interim Report was submitted to the Legislature on June 13, 2025.

REVISION. Add this new section to the Interim Report with non-substantive spelling and punctuation corrections recommended as follows:

"**§ 19.82. Interfering with the Reporting of Criminal Sexual Conduct; Defined and Punished.**

(a) Any person commits the crime of interfering with the reporting of criminal sexual conduct if the person:

(1) commits an act of criminal sexual conduct or assists in or ~~abbets~~abets any act of criminal sexual conduct, as enumerated in Chapter 25 of this Title; and

(2) intentionally, knowingly, or recklessly prevents or attempts, either directly or through other persons, to prevent the victim of or a witness to that act of criminal sexual conduct from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement officer or other official.

(b) Commission of, or assisting in or ~~abbetting~~abetting, a crime of criminal sexual conduct under Chapter 25 of this title is a necessary element of the crime of interfering with the reporting of criminal sexual conduct.

(c) Interference with the reporting of crimes of criminal sexual conduct is a felony of the third degree.

CLRC COMMENT: New section added by P.L. 38-070 (Oct. 17, 2025) after the CLRC Interim Report was sent to the Legislature on June 13, 2025. Because it is a new section, and in deference to the Legislature, the CLRC has not substantively reviewed it. However, non-substantive spelling and punctuation corrections were made. This section added to the Interim Report by the Notice of Errata and Revisions approved by the CLRC on January 29, 2026."

4. § 25.10. Definitions.

ERRATA. The Interim Report added new definitions to subsection (a). This section was amended by P.L. 38-016 on June 17, 2025 *after* the Interim Report was submitted to the Legislature on June 13, 2025.

REVISION. Revise § 25.10(a) as amended by P.L. 38-016—to reflect CLRC proposed Interim Report changes. Subsection (a)(12) amended, and (a)(16) and punctuation corrections added as follows:

"**§ 25.10. Definitions.**

(a) As used in this Chapter:

(1) “Actor” means a person accused of criminal sexual conduct~~;~~.

(2) “Consent” means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act.

(A) A person who is mentally incapacitated or physically helpless as defined by this Chapter cannot consent to a sexual act.

(B) Corroboration of the victim’s testimony is not required to show lack of consent.

(3) “Force” or “Coercion” includes, but is not limited to, any of the following circumstances:

(A) when the actor overcomes the victim through the actual application of physical force or physical violence;

(B) when the actor coerces the victim to submit by threatening to use force or violence on the victim and the victim believes that the actor has the present ability to execute these threats;

(C) when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person and the victim believes that the actor has the ability to execute this threat. As used in this Subsection, to retaliate includes threats of physical punishment, kidnapping, or extortion;

(D) when the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable; or

(E) when the actor, through concealment or by the element of surprise, is able to overcome the victim.

(4) “Intimate Parts” includes the primary genital area, groin, inner thigh, buttock, or breast of a human being~~;~~.

(5) “Mentally Impaired” means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct~~;~~.

(6) “Mentally Incapacitated” means

(A) that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent; or

(B) that a person is voluntarily under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person’s conduct.

(7) “Physically Helpless” means that a person is

(A) unconscious~~,~~;

(B) asleep~~,~~;

(C) unable to withhold consent or to withdraw consent because of a physical condition~~,~~; or

(D) for any other reason, is physically unable to communicate unwillingness to an act~~;~~.

(8) “Personal Injury” means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ~~;~~.

(9) “Sexual Contact” includes the intentional touching of the victim's or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification~~;~~.

(10) “Sexual Penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required~~; and ;~~.

(11) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

(12) "Consanguinity or Relationship by blood" means a 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.

(13) "Affinity" is the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other. The method of computing degrees of affinity is the same method as computing degrees of consanguinity.

(14) "Dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

(A) the length of the relationship;

(B) the nature of the relationship; and

(C) the frequency and type of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship."

(15) Adoption refers to the act where an adult formally becomes the guardian of a child and incurs the rights and obligations of a parent.

(16) "Cunnilingus" is the touching of the urethral opening, vaginal opening, or labia with the actor's mouth.

CLRC COMMENT: This section was amended by P.L. 38-016 (June 17, 2025) after the CLRC Interim Report was sent to the Legislature on June 13, 2025. Recommended amendments here add clarity to (a)(12), add a new definition (a)(16), and correct punctuation errors. This section in the Interim Report replaced by the Notice of Errata and Revisions approved by the CLRC on January 29, 2026."

5. § 25.15. First Degree Criminal Sexual Conduct.

ERRATA. The Interim Report made no changes to this section. However, P.L. 38-016:2 amended this section on June 17, 2025 *after* the Interim Report was submitted to the Legislature.

REVISION. Replace with section as amended by P.L. 38-016 as follows:

"**§ 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:

(1) the victim is under fourteen (14) years of age;

(2) the victim is at least fourteen (14) but less than sixteen (16) years of age and any of the following circumstances exists:

(A) the actor is a member of the same household as the victim;

(B) the actor is related to the victim by blood, adoption or affinity to the fourth degree to the victim, or

(C) the actor is in a position of authority over the victim and used this authority to coerce the victim to submit;

(D) the actor is a teacher, substitute teacher, intern/student teacher or administrator of the public school, nonpublic school, school district, in which that other person is enrolled;

(E) the actor is an employee or a contractual service provider of the public school, nonpublic school, or school district, in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of the government of Guam or government of the United States assigned to provide any service to that public school, nonpublic school, or school district, and the actor uses his or her employee,

contractual, or volunteer status to gain access to, or to establish a relationship with, that other person;

(F) the actor is an employee, contractual service provider, or volunteer of a child care facility, or a person licensed or lawfully authorized to operate a foster care facility or home or a foster care group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency;

(G) the actor is an employee, contractual service provider, or volunteer of a social services organization, victims' advocacy organization, youth correctional or detention facility, drug treatment facility or medical, psychiatric or psychological treatment facility and the sexual penetration occurs during the period of that other person's residency; or

(H) the actor is in a dating relationship with a member of the victim's household.

(3) sexual penetration occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(A) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless; or

(B) the actor uses force or coercion to accomplish the sexual penetration.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration; and

(7) the actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is

mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the first degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.15(a) shall be sentenced to a minimum of fifteen (15) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole if the victim is twelve (12) years of age or older at the time that the crime was committed; or a minimum of twenty-five (25) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole if the victim is under the age of twelve (12) years old at the time that the crime was committed. The term imposed shall not be suspended, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of said minimum term; nor shall work release or educational programs outside the confines of prison be granted; nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such sentence shall include a special parole term of not less than life with mandatory lifetime monitoring by the Parole Office, in addition to such time of imprisonment

(c) Any person convicted of criminal sexual conduct under § 25.15(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration, as defined in § 25.10 of this Chapter shall be sentenced to a minimum of twenty-five (25) years imprisonment and may be sentenced to life imprisonment without the possibility of parole. Said term shall not be suspended as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

CLRC COMMENT: This section was amended by P.L. 38-016 (June 17, 2025) after the CLRC Interim Report was sent to the Legislature on June 13, 2025. No changes were recommended in the Interim Report. This section in the Interim Report was replaced by the Notice of Errata and Revisions approved by the CLRC on January 29, 2026. In deference to the Legislature, the CLRC has not substantively reviewed the new amendments by P.L. 38-016."

6. § 25.20. Second Degree Criminal Sexual Conduct.

ERRATA: The Interim Report made no changes to this section. However, P.L. 38-016:3 amended this section on June 17, 2025 *after* the Interim Report was submitted to the Legislature.

REVISION. Replace with section as amended by P.L. 38-016 as follows:

"**§ 25.20. Second Degree Criminal Sexual Conduct.**

(a) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(1) that other person is under fourteen (14) years of age;

(2) the victim is at least fourteen (14) but less than sixteen (16) years of age and any of the following circumstances exist:

(A) the actor is a member of the same household as the victim;

(B) the actor is related to the victim by blood, adoption or affinity to the fourth degree to the victim; or

(C) the actor is in a position of authority over the victim and used this authority to coerce the victim to submit;

(D) the actor is a teacher, substitute teacher, intern/student teacher or administrator of the public school, nonpublic school, school district, in which that other person is enrolled;

(E) the actor is an employee or a contractual service provider of the public school, nonpublic school, school district, in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of the government of Guam or government of the United States assigned to provide any service to that public school, nonpublic school, school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person;

(F) the actor is an employee, contractual service provider, or volunteer of a child care facility, or a person licensed or lawfully authorized to operate a foster care facility or home or a foster care group

home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency;

(G) the actor is an employee, contractual service provider, or volunteer of a social services organization, victims' advocacy organization, youth correctional or detention facility, drug treatment facility or medical, psychiatric or psychological treatment facility and the sexual penetration occurs during the period of that other person's residency; or

(H) the actor is in a dating relationship with a member of the victim's household.

(3) sexual contact occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(A) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless; or

(B) the actor uses force or coercion to accomplish the sexual contact.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact; and

(7) the actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the second degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.20(a) shall be sentenced to a minimum of five (5) years to a maximum of fifteen (15) years imprisonment without the possibility of parole if the victim is twelve (12) years of age or older at the time that the crime was committed; or a minimum of ten (10)

years to a maximum of twenty (20) years imprisonment if the victim is under the age of twelve (12) years old at the time that the crime was committed. The term imposed shall not be suspended, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of said minimum term; nor shall work release or educational programs outside the confines of prison be granted; nor shall parole be granted; nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such sentence shall include a special parole term of not less than life with mandatory lifetime monitoring by the Parole Office, in addition to such time of imprisonment.

(c) Any person convicted of criminal sexual conduct under § 25.20(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 shall be sentenced to a minimum of fifteen (15) years imprisonment and may be sentenced to life imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted."

CLRC COMMENT: This section was amended by P.L. 38-016 (June 17, 2025) after the CLRC Interim Report was sent to the Legislature on June 13, 2025. No changes were recommended in the Interim Report. This section in the Interim Report was replaced by the Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to reflect P.L. 38-016. In deference to the Legislature, the CLRC has not substantively reviewed the new amendments."

7. § 25.25. Third Degree Criminal Sexual Conduct.

ERRATA: The Interim Report made no changes to this section. However, P.L. 38-083:1 amended this section on December 20, 2025 *after* the Interim Report was submitted to the Legislature.

REVISION. Replace with section, as amended by P.L. 38-083, as follows:

"**§ 25.25. Third Degree Criminal Sexual Conduct.**

(a) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(1) that other person is at least fourteen (14) years of age and under sixteen (16) years of age;

(2) force or coercion is used to accomplish the sexual penetration; and

(3) the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless.

(b) Criminal sexual conduct in the third degree is a felony of the second degree.

(c) Any person previously convicted of criminal sexual conduct under § 25.25(a) subsequent to a first conviction of criminal sexual conduct under Guam law or a conviction of a sex offense from another jurisdiction that has an element that would constitute sexual contact or sexual penetration as defined in § 25.10 of this Chapter shall be sentenced to ten (10) years imprisonment without the possibility of parole. Said term shall not be suspended; nor probation be imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release or educational programs outside the confines of prison be granted.

CLRC COMMENT: This section was amended by P.L. 38-083 (Dec. 20, 2025) after the CLRC Interim Report was sent to the Legislature on June 13, 2025. No changes were recommended in the Interim Report. This section in the Interim Report was replaced by the Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to reflect P.L. 38-083. In deference to the Legislature, the CLRC has not substantively reviewed the new amendments."

8. § 25.50. Interfering with the Reporting of Criminal Sexual Conduct.

ERRATA. This is a new section added by P.L.38-070:1 on October 17, 2025 *after* the Interim Report was submitted to the Legislature on June 13, 2025.

REVISION. Add this new section to the Interim Report with non-substantive spelling and punctuation corrections recommended as follows:

"**§ 25.50. Interfering with the Reporting of Criminal Sexual Conduct.**

(a) Any person commits the crime of interfering with the reporting of criminal sexual conduct if the person:

(1) commits any act of criminal sexual conduct or assists in or ~~abbets~~abets any act of criminal sexual conduct, as enumerated in this Chapter and

(2) intentionally, knowingly, or recklessly prevents or attempts, either directly or through other persons, to prevent the victim of or a witness to that act of criminal ~~sexaul~~sexual conduct from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement officer or other official.

(b) Commission of, or assisting in or ~~abbetting~~abetting, a crime of criminal sexual conduct under this chapter is a necessary element of the crime of interfering with the reporting of criminal sexual conduct.

(c) Interference with the reporting of crimes of criminal sexual conduct is a felony of the third degree.

CLRC COMMENT: New section added by P.L. 38-070 (Oct. 17, 2025) after the CLRC Interim Report was sent to the Legislature on June 13, 2025. Because it is a new section, and in deference to the Legislature, the CLRC has not substantively reviewed it. However, non-substantive spelling and punctuation corrections were made. This section was added to the Interim Report by the Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to reflect P.L. 38-070."

9. § 31.30. Child Abuse; Defined & Punished.

ERRATA. Interim Report clerical error in subsection (a) and (d) of this section.

REVISION. Replace section with corrected subsection (a) and (d) as follows:

"**§ 31.30. Child Abuse; Defined & Punished.**

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

(1) he subjects a child to cruel mistreatment; or

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

~~(2)~~(3) having a child in his care or custody or under

his control, he:

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

~~(B) subjects that child to cruel mistreatment; or~~

~~(C)~~(B) unreasonably causes or permits the physical or, emotional health of that child to be endangered or unreasonably 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.

(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.

(d) As used in this Section, neglect of a child shall consist of any of the following acts by anyone having the custody or control of the child:

(1) intentionally 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

(2) failure to do or permit to be done any act necessary for the child's physical or moral well-being.

CLRC COMMENT: Amendments to subsection (a) are for clarification, to remove redundant language and to clearly establish neglect as abuse. New subsection (d) defines neglect. Reference Cal. Penal Code § 11165.3 (The willful harming or injuring of a child or the endangering of the person or health of a child) and N.J.S.A 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes). Section revised in Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to correct clerical errors."

10. § 34.50. Criminal Mischief; Defined.

ERRATA. Interim Report clerical error in subsection (c) of this section.

REVISION. Replace with corrected section as follows:

"**§ 34.50. Criminal Mischief; Defined.**

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~~.

CLRC COMMENT: Amendments for consistency with amendments to § 34.60. Section revised in Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to correct clerical errors."

11. § 34.60. Criminal Mischief; Punished.

ERRATA. Interim Report clerical errors in this section.

REVISION. Replace with corrected section 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) A violation of ~~subsection (a) of~~ § 34.50 is a second degree felony if the defendant's conduct results in 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~~ results in 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~~ results in pecuniary loss of Five Hundred Dollars ($500) or more but less than Two Thousand Five Hundred Dollars ($500.00) ~~in excess of Fifty Dollars ($50.00)~~, and a petty misdemeanor if the defendant's conduct ~~causes or is intended to cause~~ results in 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.~~

(b) 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 (~~e~~a), 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 re-paint 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~~c) 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.

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 for uniformity with 9 GCA Chapter 80 (Disposition of Offenders). Section revised in Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to correct clerical errors."

12. § 34.70. Graffiti Prohibited.

ERRATA. This section was amended by P.L. 38-078 on December 16, 2025, *after* the Interim Report was submitted to the Legislature.

REVISIONS. Withdraw recommendations to the section in the Interim Report that conflict with amendments made by P.L. 38-078. Replace with updated section as follows:

"**§ 34.70. Graffiti Prohibited.**

(a) Definitions. For the purpose of this section, the following terms apply:

(1) Broad-tipped indelible marker means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half inch or greater.

(2) Bona fide evidence of majority means a document issued by a federal, state, county or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.

(3) Owner means any and all persons with legal and/or equitable title to real property in Guam as their names and addresses are shown upon the records of the Department of Revenue of Taxation <u>or the Department of Land Management</u>.

(4) Supervising Adult means an individual eighteen (18) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.

(5) Used or intended to be used includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.

(b) No person shall write, paint or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property owned, operated or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm or corporation unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained.

(c) Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint

can or broad-tipped indelible marker with the intent to violate the provisions of this section.

(d) Possession of spray paint or broad-tipped indelible markers by minors on public property is prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container or spray paint can or broad-tipped indelible marker while on public property, highway, street, alley, or way except in the company of a supervising adult.

(e) Possession of spray paint or broad-tipped indelible markers by minors on private property is prohibited without consent of the owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession of the aerosol container or marker while on his or her property.

(f) Any person violating subsections (b), (c), (d), or (e) shall be punished by a fine of two thousand dollars ($2,000.00) for the first offense, and four thousand dollars ($4,000.00) for each subsequent offense or by imprisonment for a term not to exceed one hundred eighty (180) days, or by both fine and imprisonment at the discretion of the court. In the case of a minor, the parents or legal guardian shall be responsible for payment of all fines. Failure of the parents or legal guardian to make payment will result in the filing of lien on the parents or legal guardian’s property to include the fine and court costs.

(g) In addition to any punishment ordered under subsection (f), the court shall order any person found in violation of subsections (b), (c), (d) or (e) to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court. Where the defendant is a minor, the parents or legal guardian shall be jointly and severally liable with the minor to make such restitution.

(h) In addition to any punishment listed in subsections (f) and restitution ordered under subsection

(g) the court shall order any person found in violation of subsection (b), (c), (d) or (e) to perform monitored community service in the removal of graffiti of not less than two hundred fifty (250) hours and not more than five hundred (500) hours.

(i) In addition to any punishment listed in subsections (f), (g), and (h), any adult convicted for violating subsections (b), (c), (d), or

(e) is guilty of a misdemeanor punishable by imprisonment for not less than a mandatory one hundred twenty (120) days.

(j) All personal property, including, but not limited to, automobiles and bicycles, used or intended to be used in violating subsections (b), (c), (d) or (e) shall be forfeitable to Guam. In any forfeiture under this section, the Court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by the laws of Guam, the Organic Act, and the U.S. Constitution.

(k) No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen years (18) shall buy any aerosol container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.

(l) Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers *shall*:

> (1) Place a sign in clear public view at or near the display of such products stating:
>
> 'GRAFFITI IS A CRIME. ANY PERSON DEFACING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO ONE HUNDRED EIGHTY (180) DAYS AND/OR A FINE UP TO FOUR THOUSAND DOLLARS ($4,000.00).'
>
> (2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers which states:
>
> "IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF TWO HUNDRED FIFTY DOLLARS ($250.00)."

(m) Violation of subsection (l) shall result in a civil penalty of two hundred fifty dollars ($250.00) for a first offense and five hundred dollars ($500.00) for subsequent offenses. When three (3) violations of subsection (l) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale

of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two (2) years. Violation of such injunction shall be punished by a fine of two hundred fifty hundred dollars ($250.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers until payment of the fine, attorney's fees and costs.

(n) In addition to any punishment ordered under Subsection (f), (g), (h), (i) and (j), the court shall immediately, upon conviction of an offender charged with the defacement of property, revoke the license or instruction permit of any driver in violation of this Section subject to a period of time described hereafter:

(1) after one (1) conviction, six (6) months;

(2) after a second or subsequent conviction, one (1) year for each conviction.

Any person who was convicted of any offense as described in this Act upon being eligible to receive a license or instruction permit, shall not be eligible to receive a license or instruction permit until the entire penalty period has elapsed.

Any prior convictions resulting in the revocation of a driver's license or instruction permit shall not run concurrently with any existing or subsequent suspension, revocation, cancellation or denial which is provided for by law."

CLRC COMMENT: This section was amended by P.L. 38-078 (Dec. 16, 2025) after the CLRC Interim Report was sent to the Legislature on June 13, 2025. Except for adding Department of Land Management to (a)(3), all other changes recommended in the Interim Report are withdrawn in deference to the Legislative amendments in P.L. 38-078. This section in the Interim Report was replaced by the Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to reflect amendments by P.L. 38-078."

13. § 70.65. Defenses; Exceptions.

ERRATA. Interim Report clerical errors in amendment to subsection (g) of this section.

REVISION. Replace with corrected section as follows:

"**§ 70.65. Defenses; Exceptions.**

(a) It is an affirmative defense in a prosecution for violation of animal abuse under § 70.25 (a) of this Article if:

(1) the defendant reasonably and humanely caused the death of the animal to end its immediate and intractable suffering; or

(2) the animal posed a present and immediate danger to the safety of people, and the defendant took reasonable measures necessary to protect against serious bodily harm, or death, to themselves or other people, livestock, or domestic animals.

(b) Ownership shall not be a defense.

(c) Guardianship shall not be a defense.

(d) Trespass by an animal shall not be a defense.

(e) Corporations and other nonhuman legal entities may be concurrently charged for acts in violation of any animal protection offense committed by their employees or agents when the act is committed in the normal course and scope of the employment or agency.

(f) It is no defense to the crime of animal abandonment that the defendant abandoned the animal at or near an animal shelter, veterinary clinic, or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

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

(1) the proper shooting or taking of game in such manner and at such times as is allowed or provided by the laws of Guam;

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

(~~3~~2) the proper killing of animals used for food~~, except for dogs and cats,~~ in accordance with the law;

(4~~3~~) the proper disinfestation of rodents and brown tree snakes;

(~~5~~4) animals properly used for education or research purposes by, or under the oversight of, the Guam Community College or the University of Guam; provided, that proper Institutional Review Board procedures and all applicable local and federal laws are followed;

(~~6~~5) euthanasia as properly conducted by a licensed veterinarian, or individual authorized by § 70.70 of this Article, and done in accordance with local law and generally accepted industry practice;

(~~7~~6) the proper disinfestation of animals deemed a disease vector and threat to public health by the Department of Public and Social Services; provided, that disinfestation is done in accordance with established procedures approved by said Department;

(~~8~~7) the proper disinfestation of species deemed invasive to Guam by the Guam Invasive Species Council; provided, that disinfestation is done in accordance with established procedures approved by said Council.

(A) Subsection (g)(~~8~~7) of this Section shall not pertain to cats or dogs, except as authorized by the Director of the Department of Agriculture, and such disinfestation efforts are done in accordance with accepted practices of veterinary medicine and procedures approved by the Council.

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. No other subsections amended. Section revised in Notice of Errata and Revisions approved by the CLRC on January 29, 2026 to correct clerical errors."

CONCLUSION

This Notice of Errata and Revisions revises the Interim Report to correct clerical errors and reflect legislative amendments to Title 9 of the Guam Code Annotated enacted after the Interim Report's submission to I Liheslaturan Guåhan on June 13, 2025. The revisions are non-substantive unless otherwise noted and are intended to ensure accuracy, consistency, and conformity with current law. The sections identified herein are intended to replace the corresponding sections of the Interim Report and to supersede any inconsistent provisions in Bill No. 232-38 or related measures adopting the Interim Report's recommendations.