

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
97-38 (LS)	Frank F. Blas, Jr. Telo T. Taitague	AN ACT TO <i>REPEAL</i> AND <i>REENACT</i> CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO <i>AMEND</i> §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE "PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025."	3/25/25 3:39 p.m. ^4/9/25 11:22 a.m.	4/11/25	Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement.	Request: 4/11/25 4/22/25	4/29/25 2:00 p.m.	7/7/25 As Amended.	



OFFICE OF SENATOR
Telo T. Taitague
CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory
Affairs, Technology, Justice, Elections, and Retirement

Ste. 407 DNA Building
2238 Archbishop Flores St.
Hagatna, Guam 96910
(671) 989-8356
senatortelot@gmail.com

I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

June 20, 2025

The Honorable Frank F. Blas Jr.
Speaker

I Mina'trentai Ocho na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

VIA: Honorable Vice Speaker V. Anthony Ada 
Chairperson, Committee on Rules

RE: Committee Report on Bill No. 97-38 (LS) - As Amended

Buenas yan Håfa adai, Speaker Blas

Transmitted herewith is the Committee Report on Bill No. 97-38 (LS) As Amended- Introduced by Frank F. Blas, Jr., Telo T. Taitague- *“AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”*

Committee votes are as follows:

<u>2</u>	TO DO PASS
<u>0</u>	TO NOT PASS
<u>3</u>	TO REPORT OUT ONLY
<u>0</u>	TO ABSTAIN
<u>0</u>	TO PLACE IN INACTIVE FILE



COMMITTEE ON RULES

RECEIVED:

June 20, 2025 5:36 p.m.
Marie Crisostomo
Revisions Received:
July 3, 2025 10:37 p.m.

Sincerely,


TELO T. TAITAGUE
Senator



OFFICE OF SENATOR
Telo T. Taitague
CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory
Affairs, Technology, Justice, Elections, and Retirement

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I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

June 20, 2025

MEMORANDUM:

TO: All Members
*Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory
Affairs, Technology, Justice, Elections, and Retirement*

FROM: Senator Telo T. Taitague
Committee Chairperson

SUBJECT: Committee Report on Bill No. 97-38 (LS), As Amended

Transmitted herewith for your consideration is the Committee Report Bill No. 97-38 (LS) As Amended- Introduced by Frank F. Blas, Jr., Telo T. Taitague- *"AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE "PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025."*

This report includes the following:

- Copy of COR Referral of Bill No. 97-38 (LS)
- Notice of Public Hearing
- Public Hearing Agenda
- Public Hearing Sign-in Sheet
- Written Testimonies and Additional Documents
- Committee Vote Sheet and E-mails
- Committee Report Digest
- Copy of Bill No. 97-38 (LS), As Introduced
- Copy of Bill No. 97-38 (LS), As Amended
- Copy of Bill No. 97-38 (LS), with Committee Markup
- Copy of Fiscal Note from the Bureau of Budget & Management Research

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Si Yu'os ma'åse'!

Senator Telo T. Taitague - Chairperson



OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory
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I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

COMMITTEE REPORT

BILL NO. 97-38 (LS), *AS AMENDED*

SPONSORED BY:

Frank F. Blas, Jr., and Telo T. Taitague

“AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”



COMMITTEE ON RULES

Vice Speaker V. Anthony Ada, Chairperson
I Mina'trentai Ocho Na Liheslaturan Guåhan
38th Guam Legislature

April 11, 2025

To: **Rennae V. C. Meno**
Clerk of the Legislature

Attorney Darleen Hiton
Legislative Legal Counsel

From: **Vice Speaker V. Anthony Ada** 
Chairperson, Committee on Rules

Subject: **Referral of Bill No. 97-38 (LS)**

Håfa Adai,

As per my authority as Chairperson of the Committee on Rules and subject to 6.01(d)(1), Rule VI of our Standing Rules, I am forwarding the referral of **Bill No. 97-38 (LS)** Frank F. Blas, Jr., Telo T. Taitague – “AN ACT TO *REPEAL* AND *REENACT* CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO *AMEND* §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

Please ensure that the subject bill is referred to Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement chaired by Senator Telo T. Taitague. I also request that the same be copied to the Prime Sponsor of the subject bill and to Management Information Services (MIS) for posting on our website.

A copy of the bill is available on our legislative website.

Should you have any questions or concerns, please feel free to contact Kamarin Nelson, Committee on Rules Director at 671-472-2461.





Isah Peredo <senatortelot.isah@gmail.com>

FIRST NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

1 message

Senator Telo Taitague <senatortelot@gmail.com>
To: phnotice@guamlegislature.gov

Tue, Apr 22, 2025 at 9:42 AM

April 22, 2025**MEMORANDUM****To: All Senators, Stakeholders and Media****From: Senator Telo T. Taitague****Subject: FIRST NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.***Håfa Adai!*

Please be advised that the *Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory Affairs, Technology, Justice, Elections, and Retirement* will conduct a public hearing on **Tuesday April 29, 2025 at 2:00 p.m.** at the Guam Congress Building in the Public Hearing Room. The Committee will hear and accept testimonies of the following items:

AGENDA FOR 2:00PM:

I. Bill No. 33-38 (COR) - V. Anthony Ada, Christopher M. Dueñas, Frank Blas, Jr., William A. Parkinson, Joe S. San Agustin, Jesse A. Lujan, Chris Barnett, Sabina F. Perez, Sabrina Salas Matanane, Tina Rose Muña Barnes, Shelly V. Calvo – **“AN ACT TO AMEND §§ 25.15(a)(2) AND 25.20(a)(2) OF CHAPTER 25, TITLE 9 AND §715(h)(7) OF CHAPTER 7 TITLE 1 GUAM CODE ANNOTATED RELATIVE TO EXPANSION OF THE ELEMENTS FOR FIRST AND SECOND DEGREE CRIMINAL SEXUAL CONDUCT.”**

II. Bill No. 88-38 (COR) – Tele T. Taitague, Sabina F. Perez, Therese M. Terlaje, Chris Barnett, Shelly V. Calvo, V. Anthony Ada - **“AN ACT TO REPEAL AND REENACT CHAPTER 25, TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO ASSESSING THE TAXATION OF VEHICLE TITLE TRANSFERS ON THE BILL OF SALE ONLY AND STREAMLINING VEHICLE OWNERSHIP TRANSFERS.”**

III. Bill No. 75-38 (COR) – Frank F. Blas, Jr. - **AN ACT TO AMEND §3101(b) OF CHAPTER 3, TITLE 16 GUAM CODE ANNOTATED; RELATIVE TO EXEMPTING NON-RESIDENT ACTIVE-DUTY SERVICE MEMBERS AND THEIR DEPENDENTS FROM DRIVER’S LICENSING REQUIREMENTS.**

IV. Bill No. 97-38 (LS) - Frank F. Blas Jr., Telo T. Taitague – **“AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE**

LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

If you are interested in participating in the Public Hearing to provide testimony, please contact the Office of Senator Telo T. Taitague via electronic mail at senatortelot@gmail.com or call (671) 989-8356.

In compliance with the Americans with Disabilities Act (ADA), individuals requiring assistance of accommodation should contact the Office of Senator Telo T. Taitague at (671) 989-8356 or email senatortelot@gmail.com.

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

Notice of this Hearing is also available on the [Government of Guam Public Notice Portal](#).

We are looking forward to your participation!

Si Yu'os Ma'åse,

Create a Great Day!

Senator Telo T. Taitague

38th Guam Legislature

Chairperson

Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement

Suite 407 DNA Building

[238 Archbishop Flores St.](#)

[Hagatna, Guam 96910](#)

Tel: (671) 989-8356

Email: senatortelot@gmail.com

5 attachments



4.29.25 First PH Notice MEMO.pdf

469K



Bill No. 33-38 (COR).pdf

1749K



Bill No. 88-38 (COR).pdf

6376K



Bill No. 75-38 (COR).pdf

1067K



Bill No. 97-38 (LS).pdf

1187K



OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations,
Regulatory Affairs, Technology, Justice, Elections, and Retirement

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I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

April 22, 2025

MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Telo T. Taitague

Subject: FIRST NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

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- III. Bill No. 75-38 (COR) – Frank F. Blas, Jr. - AN ACT TO AMEND §3101(b) OF CHAPTER 3, TITLE 16 GUAM CODE ANNOTATED; RELATIVE TO EXEMPTING NON-



OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations,
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I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

**RESIDENT ACTIVE-DUTY SERVICE MEMBERS AND THEIR DEPENDENTS
FROM DRIVER'S LICENSING REQUIREMENTS.**

- IV. **Bill No. 97-38 (LS)** - Frank F. Blas Jr., Telo T. Taitague – “AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

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Notice of this Hearing is also available on the Government of Guam Public Notice Portal.

We are looking forward to your participation!

Respectfully

Senator Telo T. Taitague
Chairperson

FIRST NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

 PRINT

FIRST NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

PUBLIC HEARING



 **Posted on:** 04/22/2025 08:40 AM

 **Posted by:** Keith Taliugyan

 **Public Hearing Date:** 04/29/2025 02:00 PM

 **Department(s):**
GUAM LEGISLATURE (/notices?department_id=92)

 **Division(s):**
OFFICE OF SENATOR TELO TAITAGUE (/notices?division_id=282)

 **Notice Topic(s):** PUBLIC HEARING (/notices?topic_id=74)

 **Types of Notice:** PUBLIC HEARING (/notices?type_id=7)

 **For Audience(s):** PUBLIC (/notices?public=1)

 **Share this notice**

April 22, 2025

MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Telo T. Taitague

Subject: FIRST NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

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([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2033-38%20\(COR\).pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2033-38%20(COR).pdf))

([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2033-38%20\(COR\).pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2033-38%20(COR).pdf))- V.

Anthony Ada, Christopher M. Dueñas, Frank Blas, Jr., William A. Parkinson, Joe S. San Agustin, Jesse A. Lujan, Chris Barnett, Sabina F. Perez, Sabrina Salas Matanane, Tina Rose Muña Barnes, Shelly V. Calvo – **“AN ACT TO AMEND §§ 25.15(a)(2) AND 25.20(a)(2) OF CHAPTER 25, TITLE 9 AND §715(h)(7) OF CHAPTER 7 TITLE 1 GUAM CODE ANNOTATED RELATIVE TO EXPANSION OF THE ELEMENTS FOR FIRST AND SECOND DEGREE CRIMINAL SEXUAL CONDUCT.”**

II. Bill No. 88-38 (COR)

([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2088-38%20\(COR\).pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2088-38%20(COR).pdf)) – Telo

T. Taitague, Sabina F. Perez, Therese M. Terlaje, Chris Barnett, Shelly V. Calvo, V. Anthony Ada - **“AN ACT TO REPEAL AND REENACT CHAPTER 25, TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO ASSESSING THE TAXATION OF VEHICLE TITLE TRANSFERS ON THE BILL OF SALE ONLY**

AND STREAMLINING VEHICLE OWNERSHIP TRANSFERS.”**III. Bill No. 75-38 (COR)**

([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2075-38%20\(COR\).pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2075-38%20(COR).pdf))– Frank F. Blas, Jr. - **AN ACT TO AMEND §3101(b) OF CHAPTER 3, TITLE 16 GUAM CODE ANNOTATED; RELATIVE TO EXEMPTING NON-RESIDENT ACTIVE-DUTY SERVICE MEMBERS AND THEIR DEPENDENTS FROM DRIVER’S LICENSING REQUIREMENTS.**

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([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2097-38%20\(LS\)%20Referred%20Version.pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2097-38%20(LS)%20Referred%20Version.pdf)) - Frank F. Blas Jr., Telo T. Taitague – **“AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”**

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A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing.

Legislature media on YouTube after the hearing.

We are looking forward to your participation!



PO BOX 368, HAGATNA, GUAM 96932

T. +1 671.637.KUAM
F. +1 671.637.9865

New Order

Revised/Add-On

Info. Update

Advertiser Name

Office of Senator Telo Taitague - 38th
Guam Legislature

Address

Suite 407 DNA Bldg; 238 Archbishop Flores
St.
Hagatna, Guam 96910

Point of Contact

Keith Taliugyan

Order Number

Order Entry Date

Customer PO #

2538PO128

Product Code

RECEIVABLES ACCOUNT

☒ Cash ☐ Trade ☐ Other

ORDER DESCRIPTION

PRODUCTION INFORMATION

Cart # Title: Length:

FOR INTERNAL PURPOSES ONLY

Media Consultant

Christie SA

Notary Required

YES

☒

NO

Billing

Per Spot

Package

☒

Trade

Station	Inc Acct	Rate	Start Date	End Date	AbsTime/Prog. Event	Length	Spot Type	Cart #	M	T	W	TH	F	SA	SU	Per Wk	Total #	Total \$
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KUAM TV

1x :15 Second Commercial on TV8 or TV11 from 12am - 5:59pm - First Notice (Air date: 04/22/25)

1x :15 Second Commercial on TV8 or TV11 from 12am - 5:59pm - First Notice (KUAM Match)

1x :15 Second Commercial on TV8 or TV11 from 12am - 5:59pm - Second Notice (Air date: 04/25/25)

1x :15 Second Commercial on TV8 or TV11 from 12am - 5:59pm - Second Notice (KUAM Match)

1x :15 Second TV Production (text and music bed only)

Contract for Public Hearing on Tuesday, April 29, 2025; 1st and 2nd Notice

MONTHLY TOTALS

Jan		Feb		Mar		Apr	500	May		June	
July		Aug		Sep		Oct		Nov		Dec	

SPECIAL INSTRUCTIONS

ORDER TOTALS

Total Spots PKG
Total Dollars \$ 500.00

TV COMMERCIAL FORMAT: We ask that all commercials be formatted to originate in HD 1920x1080 and conform to a 4x3 pillar for Title Safe dimensions for graphics. These will be downconverted on our SD channels. Should a commercial spot be produced in SD, it should be formatted in 720x486 DI format resolution and will be upconverted on HD Channels (DOCOMO 608 and 611).

RESTRICTIONS: 48-hour deadline is KUAM's quality control to ensure that your advertisement airing meets the highest standards. If there is a rush, KUAM is not responsible for quality and standard concerns on behalf of the client.

PAYMENT IS DUE UPON RECEIPT OF NOTICE. In the event of cancellation of this contract prior to its scheduled expiration date and/or failure to remit payment of invoice[s] within 60 days of invoice date, all spots that have run prior to the cancellation date and/or schedules adhered to will be billed at the Rate Card. Client understands and agrees that a finance charge of 10% per month shall accrue on all accounts remaining unpaid one [1] month after invoice date. Client agrees to pay a USD\$25.00 service fee per returned check. There will be a 5% surcharge for all credit card transactions. If payment is not made as required, KUAM may, its option, without notice or demand payment, declare Client's credit account in default, in which case Client's entire balance[s] that are due and payable will be forwarded for collection. Client agrees to accept all consequences and to pay all costs, including attorney's fees, court fees, court costs and other expenses incurred as deemed necessary by KUAM to settle the account.

NON DISCRIMINATION CLAUSE: KUAM/Pacific Telestations, LLC does not discriminate on the basis of race or ethnicity in the placement, scheduling and completion of purchase of advertising. Any order for advertising that includes any such restriction will not be accepted.

ACCEPTED BY CLIENT

4/17/25

Christie SanAgustin

ACCEPTED BY STATION



OFFICE OF SENATOR
Telo T. Taitague
CHAIRWOMAN

Committee on Economic Development, Military Building, Regional Relations,
Regulatory Affairs, Technology, Justice, Elections, and Retirement

I Mina'irentai Ocho Na Likeshaturan Gaihan • 38th Guam Legislature

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Hagana, Guam 96910
(671) 986-8356
senatortelo@gmail.com

NOTICE OF PUBLIC HEARING
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Guam Congress Building, Public Hearing Room.

The Committee will hear and accept testimonies on the following items:

AGENDA for 2:00PM:

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OFFICE OF SENATOR
Telo T. Taitague
CHAIRWOMAN

Committee on Economic Development, Military Building, Regional Relations,
Regulatory Affairs, Technology, Justice, Elections, and Retirement

I Mina'irentai Ocho Na Likeshaturan Gaihan • 38th Guam Legislature

No. 407 DNA Building
230 Archbishop Flores St.
Hagana, Guam 96910
(671) 986-8356
senatortelo@gmail.com

III. Bill No. 75-38 (COR) – Frank F. Blas, Jr. – **AN ACT TO AMEND §3101(b) OF CHAPTER 3, TITLE 16 GUAM CODE ANNOTATED; RELATIVE TO EXEMPTING NON-RESIDENT ACTIVE-DUTY SERVICE MEMBERS AND THEIR DEPENDENTS FROM DRIVER'S LICENSING REQUIREMENTS.**

IV. Bill No. 97-38 (LS) - Frank F. Blas Jr., Telo T. Taitague – **"AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE "GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025."**



OFFICE OF SENATOR
Telo T. Taitague
CHAIRWOMAN
Committee on Economic Development, Military Building, Regional Relations,
Regulatory Affairs, Technology, Justice, Education and Environment

No. 407 DNA Building
200 Archibishop Drive St.
Hagåtña, Guam 96910
(671) 989-8356
senatortelo@gmail.com

I Min'breñai Ocho Na Liheslaturan Guåhan • 18th Guam Legislature

If you are interested in participating in the Public Hearing to provide testimony, please contact the Office of Senator Telo T.

Taitague via electronic mail at senatortelo@gmail.com or call (671) 989-8356.

In compliance with the Americans with Disabilities Act (ADA), individuals requiring assistance of accommodation should

contact the Office of Senator Telo T. Taitague at (671) 989-8356 or email senatortelo@gmail.com.

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be available online via Guam Legislature Media on YouTube after the hearing.

This ad is paid for by legislature funds.



Isah Peredo <senatortelot.isah@gmail.com>

SECOND NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

1 message

Senator Telo Taitague <senatortelot@gmail.com>
To: phnotice@guamlegislature.gov

Fri, Apr 25, 2025 at 8:43 AM

April 25, 2025**MEMORANDUM****To: All Senators, Stakeholders and Media****From: Senator Telo T. Taitague****Subject: SECOND NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.***Håfa Adai!*

Please be advised that the *Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory Affairs, Technology, Justice, Elections, and Retirement* will conduct a public hearing on **Tuesday April 29, 2025 at 2:00 p.m.** at the Guam Congress Building in the Public Hearing Room. The Committee will hear and accept testimonies of the following items:

AGENDA FOR 2:00PM:

I. Bill No. 33-38 (COR) - V. Anthony Ada, Christopher M. Dueñas, Frank Blas, Jr., William A. Parkinson, Joe S. San Agustin, Jesse A. Lujan, Chris Barnett, Sabina F. Perez, Sabrina Salas Matanane, Tina Rose Muña Barnes, Shelly V. Calvo – **“AN ACT TO AMEND §§ 25.15(a)(2) AND 25.20(a)(2) OF CHAPTER 25, TITLE 9 AND §715(h)(7) OF CHAPTER 7 TITLE 1 GUAM CODE ANNOTATED RELATIVE TO EXPANSION OF THE ELEMENTS FOR FIRST AND SECOND DEGREE CRIMINAL SEXUAL CONDUCT.”**

II. Bill No. 88-38 (COR) – Telo T. Taitague, Sabina F. Perez, Therese M. Terlaje, Chris Barnett, Shelly V. Calvo, V. Anthony Ada - **“AN ACT TO REPEAL AND REENACT CHAPTER 25, TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO ASSESSING THE TAXATION OF VEHICLE TITLE TRANSFERS ON THE BILL OF SALE ONLY AND STREAMLINING VEHICLE OWNERSHIP TRANSFERS.”**

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Notice of this Hearing is also available on the [Government of Guam Public Notice Portal](#).

We are looking forward to your participation!

Si Yu'os Ma'åse,

Create a Great Day!

Senator Telo T. Taitague

38th Guam Legislature

Chairperson

Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement

Suite 407 DNA Building

[238 Archbishop Flores St.](#)

[Hagatna, Guam 96910](#)

Tel: (671) 989-8356

Email: senatortelot@gmail.com

5 attachments



4.29.25 SECOND PH Notice MEMO.pdf
469K



Bill No. 33-38 (COR).pdf
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Bill No. 75-38 (COR).pdf
1067K



Bill No. 88-38 (COR).pdf
6376K



Bill No. 97-38 (LS).pdf
1187K



OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations,
Regulatory Affairs, Technology, Justice, Elections, and Retirement

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I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

April 25, 2025

MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Telo T. Taitague

Subject: SECOND NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

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OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

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I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

**RESIDENT ACTIVE-DUTY SERVICE MEMBERS AND THEIR DEPENDENTS
FROM DRIVER'S LICENSING REQUIREMENTS.**

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We are looking forward to your participation!

Respectfully

Senator Telo T. Taitague
Chairperson

SECOND NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

 PRINT

**SECOND NOTICE of Public Hearing – Tuesday
April 29, 2025 at 2:00 p.m.**

PUBLIC HEARING



 **Posted on:** 04/25/2025 08:26 AM

 **Posted by:** Keith Taliugyan

 **Public Hearing Date:** 04/29/2025 02:00 PM

 **Department(s):**
GUAM LEGISLATURE (/notices?department_id=92)

 **Division(s):**
OFFICE OF SENATOR TELO TAITAGUE (/notices?division_id=282)

 **Notice Topic(s):** PUBLIC HEARING (/notices?topic_id=74)

 **Types of Notice:** PUBLIC HEARING (/notices?type_id=7)

 **For Audience(s):** PUBLIC (/notices?public=1)

 **Share this notice**

April 25, 2025

MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Telo T. Taitague

Subject: SECOND NOTICE of Public Hearing – Tuesday April 29, 2025 at 2:00 p.m.

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([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2033-38%20\(COR\).pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2033-38%20(COR).pdf)) - V. Anthony Ada, Christopher M. Dueñas, Frank Blas, Jr., William A. Parkinson, Joe S. San Agustin, Jesse A. Lujan, Chris Barnett, Sabina F. Perez, Sabrina Salas Matanane, Tina Rose Muña Barnes, Shelly V. Calvo – **“AN ACT TO AMEND §§ 25.15(a)(2) AND 25.20(a)(2) OF CHAPTER 25, TITLE 9 AND §715(h)(7) OF CHAPTER 7 TITLE 1 GUAM CODE ANNOTATED RELATIVE TO EXPANSION OF THE ELEMENTS FOR FIRST AND SECOND DEGREE CRIMINAL SEXUAL CONDUCT.”**

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([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2088-38%20\(COR\).pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2088-38%20(COR).pdf)) – Telo T. Taitague, Sabina F. Perez, Therese M. Terlaje, Chris Barnett, Shelly V. Calvo, V. Anthony Ada - **“AN ACT TO REPEAL AND REENACT CHAPTER 25, TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO ASSESSING THE TAXATION OF VEHICLE TITLE TRANSFERS ON THE BILL OF SALE ONLY AND STREAMLINING VEHICLE OWNERSHIP TRANSFERS.”**

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([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2075-38%20\(COR\).pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2075-38%20(COR).pdf))– Frank F. Blas, Jr. - **AN ACT TO AMEND §3101(b) OF CHAPTER 3, TITLE 16 GUAM CODE ANNOTATED; RELATIVE TO EXEMPTING NON-RESIDENT ACTIVE-DUTY SERVICE MEMBERS AND THEIR DEPENDENTS FROM DRIVER'S LICENSING REQUIREMENTS.**

IV. Bill No. 97-38 (LS)

([https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2097-38%20\(LS\)%20Referred%20Version.pdf](https://guamlegislature.gov/38th_Guam_Legislature/Bills_Introduced_38th/Bill%20No.%2097-38%20(LS)%20Referred%20Version.pdf)) - Frank F. Blas Jr., Telo T. Taitague – **“AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”**

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We are looking forward to your participation!



Senator Telo Taitague <senatortelot@gmail.com>

Invitation Letter to Provide Testimony on Bill 97-38 (LS) - April 29, 2025 at 2 p.m

1 message

Senator Telo Taitague <senatortelot@gmail.com>

21 April 2025 at 16:02

To: Stephen Hattori <sphattori@guampdsc.org>

Hafa Adai Executive Director Hattori,

Please see attached letter and kindly confirm receipt.

I look forward to hearing from you.

Si Yu'os Ma'åse,***Create a Great Day!****Senator Telo T. Taitague*

38th Guam Legislature

Chairperson**Committee on Economic Investment, Military Buildup, Regional Relations, Technology,
Regulatory Affairs, Justice, Elections, and Retirement**

Suite 407 DNA Building

238 Archbishop Flores St.

Hagatna, Guam 96910

Tel: (671) 989-8356

Email: senatortelot@gmail.com**PDSC Invitation Letter - provide testimony B97.pdf**

466K



OFFICE OF SENATOR
Telo T. Taitague
CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations,
Regulatory Affairs, Technology, Justice, Elections, and Retirement

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(671) 989-8356
senatortelot@gmail.com

I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

April 21, 2025

Transmitted via Electronic Mail

Stephen P. Hattori – Executive Director
Public Defender Service Corporation
sphattori@guampdsc.org

Subject: Invitation to provide testimony on Bill No. 97-38 (LS):

Hafa Adai Executive Director Hattori,

This letter is to notify you that the Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory Affairs, Technology, Justice, Elections and Retirement has set a Public Hearing on **Tuesday, April 29, 2025 at 2:00 p.m., in the Guam Congress Building, Public Hearing Room**, to hear the following Bill:

- I. **Bill No. 97-38 (LS)** - Frank F. Blas Jr., Telo T. Taitague – “AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

I respectfully request your presence to provide testimony and answer questions from the senate panel.

All testimony may be submitted to my office via email to senatortelot@gmail.com or delivered to the Office of Senator Telo T. Taitague Suite 407 DNA Building 238 Archbishop Flores St, Hagatna, Guam 96910 two (2) days prior to the public hearing. Please contact our office via email or at (671) 989-8356, for any questions or concerns.

Respectfully

Senator Telo T. Taitague
Chairperson



Senator Telo Taitague <senatortelot@gmail.com>

Invitation Letter to Provide Testimony on Bill 97-38 (LS) - April 29, 2025 at 2 p.m.

5 messages

Senator Telo Taitague <senatortelot@gmail.com>

21 April 2025 at 16:05

To: "Honorable Robert J. Torres" <rjtorres@guamcourts.gov>

Cc: "Sarah G. Elmore-Hernandez" <sehernandez@guamcourts.gov>

Hafa Adai Chief Justice Torres,

Please see attached letter and kindly confirm receipt.

I look forward to hearing from you.

Si Yu'os Ma'åse,

Create a Great Day!

Senator Telo T. Taitague

38th Guam Legislature

Chairperson

**Committee on Economic Investment, Military Buildup, Regional Relations, Technology,
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Hagatna, Guam 96910

Tel: (671) 989-8356

Email: senatortelot@gmail.com



Judiciary Invitation Letter - provide testimony B97.pdf
484K

Sarah G. Elmore-Hernandez <sehernandez@guamcourts.gov>

21 April 2025 at 16:25

To: Senator Telo Taitague <senatortelot@gmail.com>, "Honorable Robert J. Torres" <rjtorres@guamcourts.gov>

Dear Senator Taitague:

Thank you for your email. The Judiciary is in receipt of your invitation. Chief Justice Torres will be present at the Public Hearing to provide testimony.

Very Respectfully,

Sarah G. Elmore-Hernandez

Director of Policy, Planning, and Community Relations

Judiciary of Guam

[120 W. O'Brien Drive](#)

Hagåtña, Guam 96910

671.475.3186

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From: Senator Telo Taitague <senatortelot@gmail.com>
Sent: Monday, April 21, 2025 4:05 PM
To: Honorable Robert J. Torres <rjtorres@guamcourts.gov>
Cc: Sarah G. Elmore-Hernandez <sehernandez@guamcourts.gov>
Subject: Invitation Letter to Provide Testimony on Bill 97-38 (LS) - April 29, 2025 at 2 p.m.

[Quoted text hidden]

Senator Telo Taitague <senatortelot@gmail.com>
To: "Sarah G. Elmore-Hernandez" <sehernandez@guamcourts.gov>
Cc: "Honorable Robert J. Torres" <rjtorres@guamcourts.gov>

29 April 2025 at 10:51

Hafa Adai Sarah,

Thank you! We look forward to Chief Justice Torres's participation!

Si Yu'os Ma'åse,

Create a Great Day!

Senator Telo T. Taitague

38th Guam Legislature

Chairperson

**Committee on Economic Investment, Military Buildup, Regional Relations, Technology,
Regulatory Affairs, Justice, Elections, and Retirement**

Suite 407 DNA Building

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Hagatna, Guam 96910

Tel: (671) 989-8356

Email: senatortelot@gmail.com

[Quoted text hidden]

Sarah G. Elmore-Hernandez <sehernandez@guamcourts.gov>
To: Senator Telo Taitague <senatortelot@gmail.com>

29 April 2025 at 13:34

Dear Madam Chair:

Please find attached testimony from Chief Justice Robert J. Torres in support of Bill No. 97-38. Kindly confirm receipt of this email and its attachment.

V/r

Sarah G. Elmore-Hernandez

Director of Policy, Planning, and Community Relations

Judiciary of Guam
120 W. O'Brien Drive
Hagåtña, Guam 96910
671.475.3186

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From: Senator Telo Taitague <senatortelot@gmail.com>
Sent: Tuesday, April 29, 2025 10:51 AM
To: Sarah G. Elmore-Hernandez <sehernandez@guamcourts.gov>
Cc: Honorable Robert J. Torres <rjtorres@guamcourts.gov>
Subject: Re: Invitation Letter to Provide Testimony on Bill 97-38 (LS) - April 29, 2025 at 2 p.m.

[Quoted text hidden]

 **JOG Testimony Re Bill No. 97-38 (LS).pdf**
386K

Senator Telo Taitague <senatortelot@gmail.com>
To: "Sarah G. Elmore-Hernandez" <sehernandez@guamcourts.gov>

29 April 2025 at 13:37

Hafa adai Sarah,

Confirming receipt.

Si Yu'os Ma'åse,

Create a Great Day!

Senator Telo T. Taitague
38th Guam Legislature

Chairperson

**Committee on Economic Investment, Military Buildup, Regional Relations, Technology,
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Tel: (671) 989-8356

Email: senatortelot@gmail.com

[Quoted text hidden]



OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations,
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I Mina'trentai Ocho Na Liheslaturan Guåhan • 38th Guam Legislature

April 21, 2025

Transmitted via Electronic Mail

Honorable Robert J. Torres, Jr. – Chief Justice

Judiciary of Guam

rjtorres@guamcourts.gov

Subject: Invitation to provide testimony on Bill No. 97-38 (LS):

Hafa Adai Chief Justice Torres,

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Respectfully

Senator Telo T. Taitague

Chairperson



Senator Telo Taitague <senatortelot@gmail.com>

Invitation to Provide Testimony on Bill No.97-38(LS)

5 messages

Senator Telo Taitague <senatortelot@gmail.com>

22 April 2025 at 16:28

To: aditi.goel@6ac.org

Cc: Stephen Hattori <sphattori@guampdsc.org>, "John P. Morrison" <jmorrison@guampdsc.org>, sngata@guampdsc.org, "Cathleen L.G. Moylan" <cmoylan@guampdsc.org>

Dear Ms. Goel,

Please see the attached letter inviting the Sixth Amendment Center to participate in the upcoming public hearing for Bill No.97-38(LS).

We kindly request that you confirm your attendance at your earliest convenience. My office will provide a Zoom link for you and your associates to join virtually.

Please don't hesitate to reach out if you have any questions and please confirm receipt.

Si Yu'os Ma'åse,

Create a Great Day!

Senator Telo T. Taitague

38th Guam Legislature

Chairperson

Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement

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Hagatna, Guam 96910

Tel: (671) 989-8356

Email: senatortelot@gmail.com

**04.22.2025 Sen.TTT Invitation for 6AC to Provide Testimony.pdf**

353K

Aditi Goel <aditi.goel@6ac.org>

23 April 2025 at 00:57

To: Senator Telo Taitague <senatortelot@gmail.com>

Cc: Stephen Hattori <sphattori@guampdsc.org>, "John P. Morrison" <jmorrison@guampdsc.org>, "sngata@guampdsc.org" <sngata@guampdsc.org>, "Cathleen L.G. Moylan" <cmoylan@guampdsc.org>

Dear Senator Taitague,

Thank you for inviting the Sixth Amendment Center to attend and testify at the upcoming public hearing for Bill No. 97-38(LS) on Tuesday, April 29, at 2:00 p.m. I write to confirm receipt of your letter and that I will participate at the hearing virtually by Zoom.

Thank you and I look forward to the hearing next week.

Sincerely,
Aditi



Aditi Goel
Deputy Director

Phone 617.581.8136

Email aditi.goel@6ac.org

Web www.6AC.org

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[Quoted text hidden]

Aditi Goel <aditi.goel@6ac.org>

28 April 2025 at 09:29

To: Senator Telo Taitague <senatortelot@gmail.com>

Cc: Stephen Hattori <sphattori@guampdsc.org>, "John P. Morrison" <jmorrison@guampdsc.org>, "sngata@guampdsc.org" <sngata@guampdsc.org>, "Cathleen L.G. Moylan" <cmoylan@guampdsc.org>

Dear Senator Taitague,

I hope you are well. I look forward to participating in the public hearing on Bill No. 97-38(LS) tomorrow at 2:00 p.m. Will there be a Zoom link for the hearing?

Thank you!

[Quoted text hidden]

Senator Telo Taitague <senatortelot@gmail.com>

28 April 2025 at 11:39

To: Aditi Goel <aditi.goel@6ac.org>

Cc: Stephen Hattori <sphattori@guampdsc.org>, "John P. Morrison" <jmorrison@guampdsc.org>, "sngata@guampdsc.org" <sngata@guampdsc.org>, "Cathleen L.G. Moylan" <cmoylan@guampdsc.org>

Hafa Adai Director Goel,

Thank you for confirming your participation in the public hearing on Bill 97-38 (LS). The Public Hearing Zoom link is posted below along with virtual attendance protocol. Please also note the public hearing agenda. We look forward to your participation!

Guam Legislature is inviting you to a scheduled Zoom meeting.

Topic: Office of Senator Telo Taitague- Tuesday April 29, 2025 Public Hearing at 2:00 p.m.

Time: Apr 29, 2025 02:00 PM Guam, Port Moresby

Join Zoom Meeting

<https://us02web.zoom.us/j/87350953721?pwd=2BOsPSRN78YUx0dbDEHVMzqE0AE6aZ.1>

Meeting ID: 873 5095 3721

Passcode: TTPH

One tap mobile

+16469313860,,87350953721#,,,,*949455# US

+16694449171,,87350953721#,,,,*949455# US

AGENDA FOR 2:00PM:

I. **Bill No. 33-38 (COR)** - V. Anthony Ada, Christopher M. Dueñas, Frank Blas, Jr., William A. Parkinson, Joe S. San Agustin, Jesse A. Lujan, Chris Barnett, Sabina F. Perez, Sabrina Salas Matanane, Tina Rose Muña Barnes, Shelly V. Calvo – **“AN ACT TO AMEND §§ 25.15(a)(2) AND 25.20(a)(2) OF CHAPTER 25, TITLE 9 AND §715(h)(7) OF CHAPTER 7 TITLE 1 GUAM CODE ANNOTATED RELATIVE TO EXPANSION OF THE ELEMENTS FOR FIRST AND SECOND DEGREE CRIMINAL SEXUAL CONDUCT.”**

II. **Bill No. 88-38 (COR)** – Telo T. Taitague, Sabina F. Perez, Therese M. Terlaje, Chris Barnett, Shelly V. Calvo, V. Anthony Ada - **“AN ACT TO REPEAL AND REENACT CHAPTER 25, TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO ASSESSING THE TAXATION OF VEHICLE TITLE TRANSFERS ON THE BILL OF SALE ONLY AND STREAMLINING VEHICLE OWNERSHIP TRANSFERS.”**

III. **Bill No. 75-38 (COR)** – Frank F. Blas, Jr. - **AN ACT TO AMEND §3101(b) OF CHAPTER 3, TITLE 16 GUAM CODE ANNOTATED; RELATIVE TO EXEMPTING NON-RESIDENT ACTIVE-DUTY SERVICE MEMBERS AND THEIR DEPENDENTS FROM DRIVER’S LICENSING REQUIREMENTS.**

IV. **Bill No. 97-38 (LS)** - Frank F. Blas Jr., Telo T. Taitague – **“AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”**

Si Yu'os Ma'åse,

Create a Great Day!

Senator Telo T. Taitague

38th Guam Legislature

Chairperson

Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement

Suite 407 DNA Building

238 Archbishop Flores St.

Hagatna, Guam 96910

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Email: senatortelot@gmail.com

[Quoted text hidden]

Aditi Goel <aditi.goel@6ac.org>

28 April 2025 at 20:59

To: Senator Telo Taitague <senatortelot@gmail.com>

Cc: Stephen Hattori <sphattori@guampdsc.org>, "John P. Morrison" <jmorrison@guampdsc.org>, "sngata@guampdsc.org" <sngata@guampdsc.org>, "Cathleen L.G. Moylan" <cmoylan@guampdsc.org>

Hafa Adai Senator Taitague,

Thank you for extending an invite to 6AC and for sharing this information!

Regards,

[Quoted text hidden]



OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations,
Regulatory Affairs, Technology, Justice, Elections, and Retirement

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April 22, 2025

Aditi Goel
Deputy Director
Sixth Amendment Center
Boston, MA 02215

Transmitted via email: aditi.goel@6AC.org

Subject: Invitation to Provide Testimony on Bill No.97-38(LS)

Dear Ms. Goel,

As Chairwoman of the Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement, I formally invite you and the members of the Sixth Amendment Center to participate in the Public Hearing on Tuesday, April 29, at 2:00 p.m. to hear and discuss Bill No.97-38(LS):

“AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

The Committee believes the Sixth Amendment Center will provide valuable insight and technical assistance in the public hearing, given your March 2024 report, *The Right to Counsel on Guam: Evaluation of Trial-Level Indigent Defense Representation in Adult Criminal Cases*, which identified systemic issues in the delivery of constitutionally required right to counsel services. I kindly ask that you and your affiliates who contributed to the report provide information in the public hearing next week and address any questions or concerns that members of the Committee may have, regardless of political affiliation. Thank you for your continued support for the people of Guam and for your contributions to this critical effort to strengthen access to justice on our island. Kindly confirm your availability and whether you will participate in the hearing via Zoom.

Si Yu'os Ma'åse',

TELO T. TAITAGUE

Senator



OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations,
Regulatory Affairs, Technology, Justice, Elections, and Retirement

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PUBLIC HEARING AGENDA

Tuesday, April 29, 2025 at 2:00 p.m.

Guam Congress Building, Public Hearing Room.

The Committee will hear and accept testimonies on the following items:

AGENDA for 2:00PM:

- I. **Bill No. 33-38 (COR)** - V. Anthony Ada, Christopher M. Dueñas, Frank Blas, Jr., William A. Parkinson, Joe S. San Agustin, Jesse A. Lujan, Chris Barnett, Sabina F. Perez, Sabrina Salas Matanane, Tina Rose Muña Barnes, Shelly V. Calvo – “AN ACT TO AMEND §§ 25.15(a)(2) AND 25.20(a)(2) OF CHAPTER 25, TITLE 9 AND §715(h)(7) OF CHAPTER 7 TITLE 1 GUAM CODE ANNOTATED RELATIVE TO EXPANSION OF THE ELEMENTS FOR FIRST AND SECOND DEGREE CRIMINAL SEXUAL CONDUCT.”
- II. **Bill No. 88-38 (COR)** – Tele T. Taitague, Sabina F. Perez, Therese M. Terlaje, Chris Barnett, Shelly V. Calvo, V. Anthony Ada - “AN ACT TO REPEAL AND REENACT CHAPTER 25, TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO ASSESSING THE TAXATION OF VEHICLE TITLE TRANSFERS ON THE BILL OF SALE ONLY AND STREAMLINING VEHICLE OWNERSHIP TRANSFERS.”
- III. **Bill No. 75-38 (COR)** – Frank F. Blas, Jr. - AN ACT TO AMEND §3101(b) OF CHAPTER 3, TITLE 16 GUAM CODE ANNOTATED; RELATIVE TO EXEMPTING NON-RESIDENT ACTIVE-DUTY SERVICE MEMBERS AND THEIR DEPENDENTS FROM DRIVER’S LICENSING REQUIREMENTS.
- IV. **Bill No. 97-38 (LS)** - Frank F. Blas Jr., Telo T. Taitague – “AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

If you are interested in participating in the Public Hearing to provide testimony, please contact the Office of Senator Telo T. Taitague via electronic mail at senatortelot@gmail.com or call (671) 989-8356.

In compliance with the Americans with Disabilities Act (ADA), individuals requiring assistance of accommodation should contact the Office of Senator Telo T. Taitague at (671) 989- 8356 or email senatortelot@gmail.com .

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



OFFICE OF SENATOR
Telo T. Taitague
 CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory
 Affairs, Technology, Justice, Elections, and Retirement

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PUBLIC HEARING SIGN-IN SHEET

Tuesday, April 29, 2025 – 2:00 PM
 Public Hearing Room, Guam Congress Building

Bill No. 97-38 (LS) - Frank F. Blas Jr., Telo T. Taitague – “AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

NAME:	AGENCY/ ORGANIZATION	POSITION	TESTIMONY	CONTACT INFORMATION
1. Chief Justice Robert J. Torres	Judiciary of Guam	SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	SIGN: _____
2. Aditi Goel (Virtual)	SIXTH AMENDMENT CENTER	SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
3. Anamaria Gayle	APD	SUPPORT ☒ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
4. Stew Na'Atou	Executive Director of Public Defender Service Corporation	SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
5.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
6.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
7.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
8.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
9.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
10.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	



OFFICE OF SENATOR
Telo T. Taitague
CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory
Affairs, Technology, Justice, Elections, and Retirement

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NAME:	AGENCY/ ORGANIZATION	POSITION	TESTIMONY	CONTACT INFORMATION
1. Carol Hinkle-Sandoz	CLC	SUPPORT ☒ OPPOSE ☐	WRITTEN ☒ ORAL ☐	
2. Chris Spolanski	PDSC	SUPPORT ☒ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
3.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
4.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
5.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
6.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
7.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
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9.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
10.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	



OFFICE OF SENATOR

Telo T. Taitague

CHAIRWOMAN

Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory Affairs, Technology, Justice, Elections, and Retirement

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PUBLIC HEARING SIGN-IN SHEET

Tuesday, April 29, 2025 – 2:00 PM
Public Hearing Room, Guam Congress Building

Bill No. 97-38 (LS) - Frank F. Blas Jr., Telo T. Taitague – “AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

NAME:	AGENCY/ ORGANIZATION	POSITION	TESTIMONY	CONTACT INFORMATION
1. Stephen Hetheri	POSC	SUPPORT ☒ OPPOSE ☐	WRITTEN ☒ ORAL ☐	
2. Alana Diaz	PNSE	SUPPORT ☒ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
3. Jennifer Spesungel	PDSC	SUPPORT ☒ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
4. Nikki Lehman	PDSC	SUPPORT ☒ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
5. Joseph M. Roden	PDSC	SUPPORT ☒ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
6. Marmely Taran	PDSC	SUPPORT ☒ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
7. Adam Gunkel	POSC	SUPPORT ☒ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
8.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
9.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
10.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	



Judiciary of Guam

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



HON. ROBERT J. TORRES
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA, III
PRESIDING JUDGE

DANIELLE T. ROSETE, ESQ.
ADMINISTRATOR OF THE COURTS

April 29, 2025

The Honorable Telo T. Taitague
Ste. 407 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910

Re: Judiciary of Guam Testimony on Bill No. 97-38 (LS)

Dear Madam Chair and Members of the Committee:

Thank you for the opportunity to provide testimony on **Bill No. 97-38 (LS)**, introduced by Speaker Frank F. Blas, Jr. and Senator Telo T. Taitague, relative to the reorganization of the Guam Public Defender Service Corporation to provide effective legal aid and services to persons who are entitled to counsel under the Organic Act of Guam, the laws of Guam, and the United States Constitution and to cite this act as the “Guam Public Defender Service Corporation Act of 2025.”

The Judiciary of Guam supports this legislation and the principles it advances for our justice system.

A Necessary Reform

As the Organic Act of Guam¹ and the Sixth Amendment of the United States Constitution make clear—when a person’s liberty is at stake, the government is required to provide access to legal representation, even if that person cannot afford it.

For decades, the Judiciary has helped fulfill that responsibility through the administration of the Private Attorney Panel. This panel serves as Guam’s third tier of representation, stepping in when the Public Defender or Alternate Public Defender cannot, due to conflict. It has been a critical safety net. But while the Judiciary has worked to fill these gaps with care and integrity, we also recognize that public trust is strengthened when the defense function operates independently—free from the influence or overreach of any one branch of government.

¹ 48 U.S.C. § 1421b(g))

Bill No. 97-38 (LS) moves us in that direction. It incorporates recommendations from the Sixth Amendment Center’s March 2024 Report and lays the groundwork for a more cohesive, accountable, and independent structure—one that aligns with national best practices.

Recommendations to Strengthen Bill

In addition to our full support for the bill’s goals, we respectfully offer a few recommendations for your consideration, based on input provided by members of the Judiciary’s Private Attorney Panel in a letter sent by Associate Justice F. Philip Carbullido. Their feedback has been incorporated into the Judiciary’s official testimony herein. Additionally, while the bill includes appeals, guardian ad litem appointments, and juvenile cases, we will continue working with the Committee on Justice to provide any necessary technical edits during the markup process. We believe the following recommendations will address much of the anticipated impact, while keeping operational decisions with the PDSC and its governing board, consistent with the Sixth Amendment Center’s recommendations.

1. Ensuring a Smooth Transition

To ensure a smooth transition, we recommend that the new Board of Trustees of the Guam Public Defender Service Corporation be constituted—and that its policies and procedures be adopted—at least ninety (90) days before the effective date of October 1. This will help avoid disruptions in service and provide the Corporation time to operationalize its responsibilities. The Judiciary remains committed to assisting the Public Defender Service Corporation during this transition period to help ensure continuity of services.

2. Clarifying the Prohibition on Flat Fees

We recognize that the bill’s intent is to prohibit flat fees, which are widely criticized by the Sixth Amendment Center and the American Bar Association for discouraging meaningful representation and incentivizing early plea deals. However, current language in §11109(j) may inadvertently be interpreted as prohibiting other forms of compensation such as capped fees. To remove any ambiguity, we respectfully recommend adding new language clarifying that the section does not prohibit the use of reasonable case-type-based compensation caps:

“(j) Public legal services providers shall be compensated at a rate that does not discourage, disincentivize, or impair the provider’s ability to provide effective representation. No public legal services provider shall be paid a flat fee in exchange for legal representation services. This provision shall not be construed to prohibit the use of reasonable case-type-based compensation caps.”

3. Clarifying Appointments in Cases of Conflict

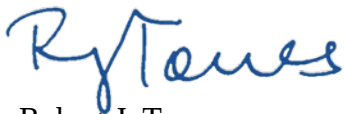
Finally, we recommend further amending § 45.40 of Chapter 45, Title 8, Guam Code Annotated to make clear that the Board of Trustees of the Guam Public Defender Service Corporation will handle the appointment when all divisions of the Guam Public Defender cannot accept a case due to a conflict of

interest. In their review of other jurisdictions, the Sixth Amendment Center has recommended that if a fourth-tier system becomes necessary, this responsibility should be delegated to an independent commission or board to ensure uniform, independent oversight and administration of all public defense services.

“§45.40. In any criminal action in which a defendant is entitled to be represented by counsel at public expense and ~~the court finds that~~ because of conflict of interest or other reason ~~that~~ all levels of the public defender has Guam Public Defender Service Corporation have properly refused to represent the defendant, the court Board of Trustees Private Attorney Panel Division of the Guam Public Defender Service Corporation shall appoint private counsel for the defendant who shall receive a reasonable compensation and necessary expenses to be paid by the Guam Public Defender Service Corporation subject to appropriation and ~~order that counsel receive a reasonable sum for compensation and necessary expenses to be paid by the Treasurer of the Territory.~~”

In sum, the Judiciary views Bill No. 97-38 (LS) as a meaningful investment in Guam’s legal system—and in the people it serves. We commend Speaker Blas and Senator Taitague for advancing this important reform, respectfully seek the Legislature’s full support, and stand ready to assist in the bill’s implementation.

Senseramente,



Robert J. Torres

Chief Justice, Judiciary of Guam



Supreme Court of Guam

GUAM JUDICIAL CENTER SUITE 300
120 WEST O'BRIEN DRIVE, HAGĀTÑA, GUAM 96910-5174
Telephone: (671) 475-3143 • Facsimile: (671) 475-3140
www.guamcourts.org



HON. F. PHILIP CARBULLIDO
ASSOCIATE JUSTICE

To: Chief Justice Robert J. Torres

From: Justice F. Philip Carbullido,
Chair, PAP Standing Committee

April 28, 2025

Re: Comments of the PAP Standing Committee on Bill No. 97-38 (LS)

Dear Chief Justice Torres:

Thank you for meeting with the Private Attorney Panel (PAP) Standing Committee (Committee) on April 18, 2025. Your willingness to engage in discussion allowed us to articulate our concerns regarding the structure and language of Bill No. 97-38 (LS). We respectfully submit the following comments to formalize our discussion, and we also provide supplementary comments identified after the meeting.

These comments are limited to only the PAP-related portions of the bill – the subject on which this Committee is charged with advising. While the Committee appreciates the efforts to strengthen indigent defense by transferring administrative oversight of the PAP to the Public Defender Services Corporation (PDSC), several provisions of the bill raise concerns regarding the proposed PAP program's sustainability, efficiency, and fairness.

Compensation Model Concerns

The Committee, as an initial point, recommends maintaining the current flat-rate compensation model – which provides for \$150.00 per hour, subject to case-type-based caps – until the PDSC develops and adopts alternative compensation policies, in consultation with the Guam Bar Association. This model has been fiscally sustainable and operationally efficient. Although it does not appear to be the bill's intent to eliminate payment caps, as currently written, the language may allow for that interpretation. The Committee recommends clarifying the bill to ensure the continued use of reasonable caps, balancing fair compensation with program sustainability. We were glad to hear during our April 18 meeting that you will recommend amending the language of the bill, specifically Section 11109(j), to clarify that the bill does not prohibit the use of reasonable case-type-based compensation caps.

Administrative Process Efficiency

Additionally, while the bill contemplates the creation of an administrative division to manage PAP attorney payments, we note that the current process already requires substantial administrative effort. The current system, which involves monthly voucher submissions for review and approval by the Supreme and Superior Court Clerks' Offices and Judiciary of Guam's Financial Management Division, is labor-intensive but functions efficiently with layers of review and accounting that ensure appropriate

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and timely compensation of appointed attorneys. While we have concerns about ensuring that the future administrative division of the PDSC is equipped to timely process payments, at our recent meeting, you alleviated some of those concerns because you were amenable to proposing language requiring the new PDCS Board of Trustees be constituted and policies and procedures be developed and adopted at least 90 days before the legislation's effective date.

Court-Appointed Investigators

The bill authorizes the appointment of investigators on a case-by-case basis within the PAP Division – a much-needed service for PAP attorneys. However, it fails to ensure their availability or establish a clear appointment process. Given the current shortage of investigators, this provision does not adequately address the logistical challenges PAP attorneys routinely face. Greater structure and guarantees are needed to ensure meaningful support for indigent defense.

Need for Clear Standards and Transition Planning

The Committee initially recommended delaying the full transition of the PAP program and retaining the current PAP panel until the PDSC has adopted clear policies for recruiting and selecting new members and developed and implemented the necessary administrative framework. If the Legislature proceeds with passage of the bill, the Committee suggested including a delayed effective date – preferably not less than six (6) months – to provide the PDSC sufficient time to establish and adopt the required policies and procedures. However, you advised at our April 18 meeting that the Judiciary will recommend amended language requiring that the new PDCS Board of Trustees be constituted and policies and procedures be developed and adopted at least 90 days before the effective date instead of the Committee's recommendation of delaying implementation for at least 6 months. Because our primary concern was the danger of launching a system without adequate policies and procedures in place, your suggested approach would sufficiently satisfy this concern.

Supplementary Concerns

Below are additional comments, concerns, and recommendations proposed by the Committee following our April 18 meeting. Section 11103 of the bill states, "Except for the Supreme Court of Guam's authority to regulate the practice of law under the Organic Act of Guam, the Corporation shall have full authority to independently and autonomously oversee, supervise, and control the administration, budgeting, funding, jurisdiction, and delivery of all public legal services in Guam." The reference to "jurisdiction of all public legal services in Guam" is problematic, as it may conflict with – or even usurp – the Judiciary's role as established in the Organic Act. Under the Organic Act, the Judiciary alone has authority over the regulation of the legal profession, including attorney admission, conduct, and discipline. The Judiciary is also solely responsible for administering justice, which includes appointing legal counsel for indigent defendants in criminal cases. The Committee recommends removing the term "jurisdiction" to clarify or limit the scope of the PDSC's authority over public legal services. Further, regarding this section, we recommend:

1. Revising lines 15-18 to state: “Subject to the Supreme Court of Guam’s inherent, statutory, and Organic Act authority, the Corporation shall have authority to oversee, supervise, administer, budget, and fund public legal services in Guam.”
2. Striking the “delivery of all public legal services in Guam” language because appointed attorneys, not the PDSC, would be delivering legal services.
3. Deleting the last sentence stating that the PDSC shall exercise its statutory powers and duties independent of any other branch of the government of Guam. As written, this language is not entirely accurate because the PDSC will not exist as a separate branch of government and will be subject to other branches of the government of Guam, including the Judicial branch, which cannot cede its inherent, statutory, or Organic Act powers, or the legislative branch, which would continue its oversight and funding over the PDSC.

The Committee also recommends revisions or a closer examination concerning other sections of the bill, which are:

1. Section 11104(d)(5). We recommend including representation at the appellate level in addition to trials and writs. Section 11111(b) also requires a managing attorney for the PAP division. Given that all attorneys on the panel are independent, this requirement may not be necessary. It may be necessary if the PAP division will be making appointments. See proposed 45.40 (“Private Attorney Panel Division of the Guam Public Defender Service Corporation shall appoint private counsel for the defendant...”).
2. Section 11104. It appears that the Corporation will be accepting appointments. The section specifically states that “whether a defendant is indigent and whether his case is to be referred to the Corporation shall be at the discretion of the judge.” This language may need to be revisited to ensure clarity and alignment with the overall appointment system.
3. Section 45.40. This section should be aligned with the final language of Section 11104. Currently, it treats the PAP as separate from the PDSC, which may require adjustment/clarity on what happens if there are no PAP members available.
4. Juvenile Matters. There may need to be a section similar to Section 45.40 for juvenile matters. Specifically, when appointing Guardians *ad Litem* (GAL) in juvenile cases, the process could be structured as follows:
 - a. First, appoint the Civil Law Center.
 - b. Next, appoint Non-Profit Legal Aid offices within the PAP.
 - c. Then, appoint the general PAP members.
 - d. Finally, appoint private counsel.

April 28, 2025

Page 4 of 4

There should be a distinct appointment structure for GAL and other juvenile proceedings and juvenile delinquency cases.

The Committee supports the overarching goal of stabilizing indigent defense services. However, we continue to urge a careful and deliberate approach to the transition proposed in Bill No. 97-38 (LS). Preserving existing mechanisms in the interim or requiring that they be set in place well before the effective date of the proposed law will ensure continued access to justice while giving the PDSC time to build a durable and equitable structure. We appreciate the opportunity to provide these comments and remain committed to working collaboratively to improve the delivery of indigent legal services for the people of Guam.

Respectfully submitted,



Hon. F. Philip Carbullido
Chairperson
PAP Standing Committee

cc: Speaker Frank F. Blas, Jr., 38th Guam Legislature

Senator Telo T. Taitague, Chair of the Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement

Jacqueline T. Terlaje, *Esq.*, President of the Guam Bar Association

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Hannah G. Arroyo, *Esq.*

Janice Camacho-Perez, *Esq.*

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April 29, 2025

Transmitted via Electronic Mail

Senator Telo T. Taitague

Chairwoman, Committee on Economic Investment, Military Buildup, Regional Relations, Regulatory Affairs, Technology, Justice, Elections and Retirement

38th Guam Legislature

senatortelot@gmail.com

RE: Testimony in support of Bill 97-38

Buenas yan Håfa Adai Chairwoman Senator Taitague and Honorable Members of *I Mina'*
Trentai Ocho Na Liheslaturan Guåhan:

I am Stephen P. Hattori, the current Executive Director of the Guam Public Defender Service Corporation (“PDSC”). PDSC currently consists of three divisions, PDSC, Alternate Public Defender (“APD”) and the Civil Law Center (“CLC”). Collectively we represent indigent residents in both criminal and civil matters.

We are celebrating our 50th anniversary of PDSC this July. The defense system has previously been under the development and supervision of the judiciary since its inception. The Judiciary has assumed sole responsibility for guarding the Sixth Amendment Constitutional Right. Our current board is Chaired by the Chief Justice of Guam; our Vice-Chair is the Presiding Judge of the Superior Court. However all public officials, whether you are in the Judicial, Legislative or Executive Branch take an oath to protect the Constitution and the Organic Act of Guam. The indigent defense system has evolved to the point where this Office, should be co-equally protected and supervised by each of the three branches. The draft bill creates a board giving each Branch equal responsibility over the protection and development of this important

Constitutional and Organic Right. It will also permit the Judiciary to return to being a neutral arbitrator in our adversarial system of justice.

I submit this testimony in strong support of Bill No. 97-38, the Guam Public Defender Service Corporation Act of 2025. This bill represents a critical and long-overdue restructuring of Guam's indigent defense system to align with both the constitutional mandate under the Sixth Amendment and the best practice standards outlined in the American Bar Association's Amended Ten Principles of a Public Defense Delivery System. This bill is a product of the 6th Amendment Center's comprehensive study on Guam's Indigent Defense system. The 6AC provides technical assistance to establish and implement public defense systems that meet constitutional muster, while promoting public safety and fiscal responsibility.

In December of 2022 a Memorandum of Understanding was entered between the 6AC and the PDSC Board to undertake a study of Guam's Indigent Defense system. Over the course of the following year, and throughout the recovery of the island from Typhoon Mawar, the 6AC interviewed over 82 individual judges, magistrates, court personnel, former prosecutors, corrections and probation officials, staff and board of PDSC and private attorneys appointed to represent indigent people. They observed 167 court proceedings. They also collected data from the various stakeholders. The interviews, review of documentary materials culminated in a 72 page report issued on March 16, 2024, the anniversary of *Gideon v. Wainwright*. The Report and the recommendations were also based upon national standards, specifically, the American Bar Association Revised Ten Principles of a Public Defense Delivery System. The ABA Revised Ten Principles address issues such as Independence, Funding, Structure and oversight, workload standards and control, data collection, financial eligibility; early and confidential access to counsel; training and experience; vertical representation; support services essential to effective representation; Public Defense as a legal system partner.

The 6AC's comprehensive evaluation of Guam's indigent defense services exposed systemic challenges, including:

- 1) **Lack of structural independence**, with the Judiciary continuing to oversee aspects of indigent defense, such as the Private Attorney Panel, contrary to national standards.

- 2) **Inadequate funding and reliance on unstable sources**, such as court fines and fees, that do not align with service demand or constitutional requirements.
- 3) **Inconsistent standards** for attorney qualifications, supervision, training, and workload management.
- 4) **Deficient data collection**, making it difficult to assess system effectiveness or ensure adequate coverage and representation.

These findings underscore the urgent need to restructure Guam's indigent defense system as proposed in Bill No. 97-38. The Recommendations set forth in Bill No. 97-38 addresses these issues and reflects the ABA's Revised Ten Principles as well.

1. **Independence** (Principle 1): The bill establishes the Guam Public Defender Service Corporation (PDSC) as an autonomous body, structurally independent from the Judiciary, Executive, and Legislature. The seven member board will consists of two appointees each from the three branches and one from the Guam Bar President. The diverse appointment of its Board ensures no single branch exerts disproportionate influence. Structural independence is a constitutional safeguard. It ensures that the defense function can zealously represent indigent clients and breeds trust in the system by freeing the defense from institutional pressures that could compromise the adversarial and fair system of justice. The U.S. Supreme Court has long held that the Sixth Amendment guarantees not only the right to counsel but the right to **effective** and **conflict-free** counsel. National standards, including the *ABA's Revised Ten Principles of a Public Defense Delivery System* (Principle 1), emphasize that defense services must be **free from judicial, executive, or legislative interference** to ensure attorneys can advocate solely in the interests of their clients. When public defenders are supervised or funded by judges, **a structural conflict arises**: the same branch responsible for ensuring a fair trial also holds sway over the defender's employment, funding, and assignments. Additionally the report recommends that other Board members may be from the general public with a background in public service. For example, the law could require that at least three of the members of the Board shall be members of the public with demonstrated commitment to ensuring effective legal representation for indigent persons. Public members may include individuals with experience in community advocacy, social services, civil-rights work, or personal experience as a recipient of indigent defense services.

2. **Statewide Scope and Oversight** (Principles 2 & 10): The Corporation will oversee all indigent defense functions—including public defenders, alternate defenders, civil law center, and private attorney panels—under uniform standards and centralized governance. It would also statutorily create the Alternate Public Defender and Civil Law Center as separate divisions within the Corporation headed by a Managing Attorney.
3. **Qualifications and Training** (Principle 9): The PDSC is empowered to promulgate and enforce minimum standards for attorney qualifications, training, and supervision.
4. **Resource Parity** (Principle 8): By enabling direct appropriations from the Legislature, the bill strengthens funding stability and moves toward parity with prosecutorial and law enforcement resources. The Legislature has done a great job thus far in funding the Constitutional rights of our constituents. The Legislature already appropriates funding for PDSC and APD and this Bill consolidates the entire indigent defense system. Although this Bill does not have funding, the cost of consolidating all indigent defense under an independent board will be included in the PDSC Budget that will be subject to a public hearing later this term. The PAP deserves to have the same stable and fixed funding source that the Legislature has provided to PDSC and APD. The Client Service Trust Fund is dependent on court filing fees and fines. Civil filings, traffic tickets and other fines have been decreasing according to the latest Citizen-Centric Report issued by the Judiciary of Guam. Increasing filing fees and fines are the only means of increasing that unstable funding source. It is like robbing Peter to pay Paul. Civil litigants and traffic violators should not be shouldering the cost of protecting this Constitutional Right.
5. **Workload Control and Effective Representation** (Principles 5, 6, & 7): With the authority to manage caseloads and hire or contract appropriate staff, the Corporation is structured to provide effective representation, sufficient attorney time, and continuity of counsel.
6. **Data Collection and Evaluation** (Principle 10): The Bill tasks PDSC with collecting and analyzing data to support evidence-based policymaking and compliance with constitutional mandates. This will lead to greater transparency as the Legislature will know exactly where the appropriated monies are spent.

7. Continuity of Operations: The Bill also re enacts statutory provisions currently existing for the operations of the Public Defender Service Corporation, the Alternate Public Defender and the Civil Law Center.

This legislation is not merely administrative reform—it is a reaffirmation of Guam’s commitment to constitutional justice. It replaces a fragmented and underfunded system with a unified, accountable, and professional structure capable of delivering quality legal defense services to all eligible individuals, regardless of economic status.

Bill 97-38 has also received overwhelming support from the PDSC Board of Trustees which understands that the Board will be reconstituted with different members and the Guam Bar Association at its recent Guam Bar Annual Meeting. Attached are both Resolutions.

I, along with the undersigned, respectfully urge the Legislature to pass Bill No. 97-38 without delay. Doing so will place Guam at the forefront of indigent defense reform in the U.S. territories and send a powerful message about our collective dedication to fairness, justice, and the rule of law.

***Saina Ma’åse’* for your time and leadership.**

STEPHEN P. HATTORI
Executive Director,
Public Defender Service Corporation

JOHN P. MORRISON
Deputy Director
Public Defender Service Corporation

ANA MARIA C. GAYLE
Managing Attorney
Alternate Public Defender

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PUBLIC DEFENDER SERVICE CORPORATION
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PUBLIC DEFENDER SERVICE CORPORATION
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RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC
DEFENDER SERVICE CORPORATION TO OVERSEE ALL INDIGENT
LEGAL SERVICES ON GUAM

RESOLUTION NO. 05-25

WHEREAS, the right to counsel is a fundamental guarantee under the Organic Act of Guam and the Sixth Amendment to the United States Constitution, obligating Guam to ensure effective assistance of counsel to indigent individuals facing a potential loss of liberty; and

WHEREAS, the Public Defender Services Corporation (PDSC) administers the majority of adult and juvenile trial and appellate representation throughout Guam, with primary representation provided by public defenders from the PDSC division, secondary representation administered by the Alternate Public Defender (APD) division, and tertiary representation by a Private Attorney Panel appointed by the Judiciary of Guam and compensated on an hourly basis, and in cases where no panel attorney is available, judges have the authority to appoint a licensed attorney to ensure representation; and

WHEREAS, a March 2024 evaluation by the Sixth Amendment Center identified challenges in achieving full independence for Guam's indigent defense system, which is essential to ensuring effective representation and public confidence in the justice system, highlighting the need for an independent governance structure to oversee indigent defense services; and

WHEREAS, for years, the Judiciary of Guam has overseen and provided administrative support for the operations of the Private Attorney Panel; and while the Judiciary's leadership has been necessary to ensure the right to counsel during the early development of indigent defense, the Sixth Amendment Center's report has emphasized that independence is essential to prevent undue influence from any single branch of government; and

WHEREAS, to address these concerns, Bill No. 97-38 (LS) provides that the Guam Public Defender Service Corporation shall manage the island's public legal services delivery system; and

WHEREAS, under the bill, the PDSC will oversee all indigent defense services on Guam, including, at minimum, a public defender division, an alternate public defender division, a civil legal services division, and a private attorney panel; and the corporation will further have the authority to promulgate and enforce standards for indigent defense, collect and analyze data, and allocate resources to maintain effective and equitable representation; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees supports Bill No. 97-38 (LS) to reorganize the Guam Public Defender Service Corporation, thereby enhancing its capacity to comprehensively manage indigent legal services on Guam.

DULY AND REGULARLY ADOPTED this _____ day of March 2025, at a duly noticed meeting of the Board of Trustees.

CHIEF JUSTICE ROBERT J. TORRES

ATTEST:

SHANE G.L. NGATA
Secretary

Passed by acclamation at Board meeting on March 25, 2025.

Resolution 2025-003

GUAM BAR ASSOCIATION PROPOSED RESOLUTION

WHEREAS, the Right to Counsel is a fundamental guarantee under the Sixth Amendment to the United States Constitution and under the Organic Act that serves as Guam's Constitution;

WHEREAS, the landmark case, *Gideon v. Wainwright* established the obligation of the States through the due process clause of the Fourteenth Amendment and the Organic Act of Guam reinforces this right;

WHEREAS, the Guam Public Defender Service Corporation was established in July of 1975 by Public Law 13-051 and will be celebrating their 50th anniversary on July 10, 2025;

WHEREAS, the Guam Public Defender Service Corporation and the Alternate Public Defender provide the two primary layers of indigent representation for those individuals charged with crimes and who are indigent.

WHEREAS, the American Bar Association has adopted the revised TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, dated August 2023 and recommended that each jurisdiction assess compliance and implement changes where deficiencies may exist;

WHEREAS, in December of 2022, the 6th Amendment Center(6AC), a non-partisan, non-profit organization founded to protect and enhance the Right to Counsel entered into a Memorandum of Understanding to conduct a study on trial level indigent defense representation utilizing the ABA Ten Principles of a Public Defense System.

WHEREAS, over the course of the next year the Sixth Amendment Center interviewed over 82 individual judges, magistrates, court personnel, former prosecutors, private attorneys, staff and board members of PDSC, corrections and probation officials. They observed 167 court proceedings. This culminated in a 72 page report issued on March 16, 2024.

WHEREAS, the 6AC Report generated four recommendations involving the need to vest authority over indigent legal services in an independent Board.

WHEREAS, on March 25, 2025, Bill No. 97-38 was introduced before the 38th Guam Legislature that would reconstitute the current Public Defender Service Corporation Board and replace current members with a seven person board consisting of members appointed by each of the three branches of government and one appointed by the Guam Bar President;

WHEREAS, the proposed bill incorporates many principles of the ABA Ten Principles of an Effective Defense System, including independence of the defense function to promote effective and competent representation, to share the responsibility of protecting this Constitutional Right amongst the Legislative, Executive and Judicial Branches.

WHEREAS, the Independent Board will be authorized to promulgate rules and regulations for the appointment of counsel and for the fair compensation of court appointed attorneys utilizing rates based upon Standards set forth by the Board;

WHEREAS, the independent board would be able to promulgate rules and policies regarding funding, workloads, performance standards, eligibility for services, early and confidential access to clients, provide training and supervision. The Board will be able to compile data to encourage transparency regarding workloads and billings.

WHEREAS, an independent board could develop system-wide policies regarding the use of investigators, social workers, expert witnesses and would be able to effectively lobby for additional resources from available funding sources;

WHEREAS, Bill No. 97-38 provides for a seven member board consisting of four attorneys and three non-lawyers;

NOW, THEREFORE, BE IT RESOLVED, BY THE GUAM BAR ASSOCIATION ACTIVE MEMBERSHIP IN ATTENDANCE AT THE 2025 ANNUAL MEETING HELD ON APRIL 22, 2025:

- 1. That the Guam Bar Association recommends to the Guam Legislature support for Bill No. 97-38 and supports fully funding indigent defense to include access to investigators, social workers and expert witnesses;**
- 2. That the Guam Bar Association recommends to the Guam Supreme Court that current rules regarding the appointment of counsel and payments contained in the Miscellaneous Rules of the Superior Court remain in effect until replaced or modified by an Independent Board as envisioned by Bill No. 97-38;**
- 3. That the Guam Bar Association recommends its members to testify on the matter scheduled for a Public Hearing on Tuesday, May 6 at 2:00 p.m.**

Passed by Acclamation at GBA Annual Meeting on April 23, 2025



THE RIGHT TO COUNSEL ON GUAM

Evaluation Of Trial-Level Indigent Defense
Representation In Adult Criminal Cases

MARCH 2024

The Right to Counsel on Guam: Evaluation of Trial-Level Indigent Defense Representation in Adult Criminal Cases

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SIXTH AMENDMENT CENTER

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Prepared by

The Sixth Amendment Center is a non-partisan, non-profit organization providing technical assistance and evaluation services to policymakers and criminal justice stakeholders. Its services focus on the constitutional requirement to provide effective assistance of counsel at all critical stages of a case to the indigent accused facing a potential loss of liberty in a criminal or delinquency proceeding. See SIXTH AMENDMENT CENTER, <https://6AC.org>.

The Sixth Amendment Center acknowledges with gratitude those who contributed to the work of conducting the evaluation and writing this report:

Sixth Amendment Center staff: Nancy Bennett, Gabrielle Caron, David Carroll, Lacey Coppage, Aditi Goel, Rachael Liebert, Marquita Johnson, Phyllis Mann, Jon Mosher and Jiacheng Yu.

Sixth Amendment Center Law Student Network interns: Rohan Garg, Maya Madden, and Tori Staley

Prepared for

The Guam Public Defender Service Corporation requested this evaluation.

This report solely reflects the opinions of the authors and does not necessarily reflect the views of the Guam Public Defender Service Corporation.

Executive Summary

In 1963, the U.S. Supreme Court declared it an “obvious truth” in *Gideon v. Wainwright* that anyone accused of a crime who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.” *Gideon* holds that the provision of the Sixth Amendment right to effective assistance of counsel for the indigent accused is an obligation of the states under the due process clause of the Fourteenth Amendment. The *Organic Act of Guam* requires that the Sixth Amendment and the Fourteenth Amendment due process clause apply on Guam and shall have the same force and effect there as in the United States. Therefore, the right to counsel is an obligation of Guam under the *Organic Act*.

The Guam legislature created the Public Defender Service Corporation (PDSC corporation) “to provide effective legal aid and assistance to those persons in Guam who are unable to afford counsel.” The PDSC corporation requested the Sixth Amendment Center (6AC) to conduct this evaluation.

6AC is a non-partisan, non-profit organization providing technical assistance and evaluation services to policymakers and criminal justice stakeholders. 6AC evaluates indigent defense systems through four basic components: legal research and analysis; data collection and analysis; court observations; and criminal justice stakeholder interviews.

The first step in evaluating right to counsel services in any jurisdiction is to understand the broader criminal justice system within which the indigent defense system operates. Because the people of Guam did not have the freedom to govern themselves for most of the past 400 years, Guam’s history is important to understanding the development of its justice system. Chapter II through V explains that history and the broader criminal justice system. Chapters VI through IX contain our findings, and Chapter X contains our recommendations.

Guam’s justice system is relatively young, and its indigent defense system is even younger. As such, since its inception, the Judiciary of Guam has assumed the responsibility of overseeing the provision of the right to counsel on Guam. Members of the judiciary expressed the position that judicial oversight of indigent defense services was necessary in the earliest stages of growth to ensure its proper development and evolution. Nonetheless, Guam must ensure the independence of right to counsel services.

The findings from our evaluation reflect, at root, an indigent defense system that lacks independence. The question for Guam’s policymakers is how best to provide effective assistance of counsel to indigent people, as required by the Sixth Amendment, under Guam’s unique circumstances. There is no uniform “cookie-cutter” indigent defense services delivery model that jurisdictions *must* apply. Our recommendations suggest one way for restructuring Guam’s indigent defense system to achieve independence.

RECOMMENDATION 1: Guam should vest the authority to oversee all indigent legal services in an independent right to counsel commission.

Guam should give an equal number of commission member appointments to the executive, legislative, and judicial branches of government, so that no single branch of government can usurp power over or exert outsized influence over the delivery of indigent defense services.

RECOMMENDATION 2: Guam should empower the right to counsel commission to promulgate and enforce standards applicable to all indigent defense system attorneys.

The right to counsel commission must be statutorily required to promulgate and enforce binding standards applicable to all indigent defense system attorneys, including: attorney qualifications; attorney performance; attorney supervision; time sufficiency; continuity of services whereby the same attorney provides representation from appointment through disposition; client communications; data collection; and indigency determination.

RECOMMENDATION 3: Guam should empower the right to counsel commission to collect, analyze, and report on data needed to ensure effective representation.

The commission should collect and evaluate on an on-going basis all information necessary to ensure that a sufficient number of qualified attorneys are available to be appointed and that adequate resources are available to ensure effective assistance of counsel can be provided to each person who is entitled to public counsel under the *Organic* Act, the Sixth Amendment, and Guam law.

RECOMMENDATION 4: Guam should authorize and fund the right to counsel commission to create an office of indigent legal services to carry out the day-to-day duties of the commission.

The commission should have statutory authority to select a senior attorney to serve as executive director of the office of indigent legal services. The executive director should be hired for a fixed term that is subject to renewal and should not be removed from office absent good cause shown through due process.

THE RIGHT TO COUNSEL ON GUAM

EVALUATION OF TRIAL-LEVEL INDIGENT DEFENSE
REPRESENTATION IN ADULT CRIMINAL CASES

MARCH 2024

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CHAPTER I

Introduction

A. The right to counsel on Guam

The Sixth Amendment to the United States Constitution states that in “all criminal prosecutions” the accused shall enjoy the right, among others, to “have the Assistance of Counsel for his defence.”¹ In 1963, the U.S. Supreme Court declared it an “obvious truth” that anyone accused of a crime who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.”² The U.S. Supreme Court held in *Gideon v. Wainwright* that providing the Sixth Amendment right to effective assistance of counsel for the indigent accused in state courts is an obligation of the states under the due process clause of the Fourteenth Amendment.³

The *Organic Act of Guam* is the controlling law of Guam,⁴ established by and subject to amendment by the U.S. Congress.⁵ The *Organic Act* contains a “Bill of Rights” that provides: “In all criminal prosecutions the accused shall have the right . . . to have the assistance of counsel for his defense.”⁶ It also requires that the Sixth Amendment of the United States Constitution and the Fourteenth Amendment due process clause⁷ apply on Guam and “shall have the same force and effect there as in the United States or in any State of the United States.”⁸ Therefore, the right to counsel is an obligation of Guam under the *Organic Act*.

Since *Gideon v. Wainwright*, the Sixth Amendment right to counsel means every person who is accused of a crime is entitled to have an attorney provided at government expense to defend them in all federal courts and the courts of Guam (just as in all state courts) whenever that person is facing the potential loss of liberty and is unable to afford an attorney.⁹ Moreover, the appointed lawyer needs to be more than merely a

1 U.S. CONST. amend. VI.

2 *Gideon v. Wainwright*, 372 U.S. 335 (1963).

3 *Gideon v. Wainwright*, 372 U.S. 335, 343-45 (1963).

4 48 U.S.C. §§ 1421 *et seq.* (2022). The *Organic Act* establishes the government of Guam as its three branches with those powers given to them by the *Organic Act*, and it places Guam “under the general administrative supervision of the [U.S.] Secretary of the Interior.” 48 U.S.C. § 1421a (2022)

5 Guam is not afforded a voting member of Congress. Instead, since 1972 Guam has a non-voting delegate to the U.S. House of Representatives. 48 U.S.C. § 1711 (2022).

6 48 U.S.C. § 1421b(g) (2022).

7 The Fourteenth Amendment’s second sentence of section 1 is commonly referred to as the “due process clause” and states: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

8 48 U.S.C. § 1421b(u) (2022).

9 *Gideon v. Wainwright*, 372 U.S. 335 (1963).

warm body with a bar card.¹⁰ The attorney must also be effective,¹¹ subjecting the prosecution's case to "the crucible of meaningful adversarial testing."¹²

The U.S. Supreme Court has expressly held that the Sixth Amendment requires the appointment of counsel for the indigent in felonies, jailable misdemeanors,¹³ misdemeanors with suspended sentences,¹⁴ direct appeals,¹⁵ and appeals challenging a sentence imposed following a guilty plea where the sentence was not agreed to in advance.¹⁶ Children in delinquency proceedings, no less than adults in criminal courts, are entitled to appointed counsel when facing the loss of liberty.¹⁷

All crimes on Guam are either a felony, misdemeanor, or petty misdemeanor, and they all carry possible imprisonment as a sentence upon conviction.¹⁸ Guam guarantees by statute that: "In any criminal action, the defendant is entitled . . . [t]o defend in person and with counsel. Every defendant accused of a crime who is financially unable to employ counsel shall be entitled to have counsel assigned at public expense to represent him at every stage of the proceedings from his initial appearance before the court through appeal, unless he waives such appointment."¹⁹ Guam's court rules make clear that this guarantee applies to both adults and children.²⁰

Under the *Organic Act, I Liheslaturan Guåhan* (the Guam legislature)²¹ is free to enact greater protections for its people than those required by federal law, so long as the laws enacted do not contravene the

10 As the Court noted in *Strickland v. Washington*, 466 U.S. 668, 685 (1984), "[t]hat a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command."

11 *McMann v. Richardson*, 397 U.S. 759, 771 n.14 ("It has long been recognized that the right to counsel is the right to the effective assistance of counsel."). To be effective, an attorney must be reasonably competent, providing to the particular defendant in the particular case the assistance demanded of attorneys in criminal cases under prevailing professional norms, such as those "reflected in American Bar Association standards and the like." *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984),

12 *United States v. Cronin*, 466 U.S. 648, 656 (1984).

13 *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

14 *Alabama v. Shelton*, 505 U.S. 654 (2002).

15 *Douglas v. California*, 372 U.S. 353 (1963).

16 *Halbert v. Michigan*, 545 U.S. 605 (2005).

17 *In re Gault*, 387 U.S. 1 (1967).

18 9 GUAM CODE ANN. § 1.18(a) (2022). See 8 GUAM CODE ANN. § 5.50 (2022).

A felony is an offense that carries a sentence of imprisonment in excess of one year. 9 GUAM CODE ANN. § 1.18(b) (2022). There are three degrees of felonies: a) first degree felony – sentence of not less than 5 years and not more than 20 years; b) second degree felony – sentence of not less than 3 years and not more than 10 years; and c) third degree felony – sentence of not more than 5 years. There are lesser sentences of imprisonment available for first felony convictions and greater sentences including up to life imprisonment available in various aggravating circumstances. 9 GUAM CODE ANN. §§ 1.19, 80.30, 80.31, 80.32, 80.37, 80.37.1, 80.37.2, 80.37.3, 80.38, 80.42 (2022).

A misdemeanor is an offense that carries a maximum sentence of imprisonment of not more than one year, with a greater sentence of up to three years imprisonment available in various aggravating circumstances. 9 GUAM CODE ANN. §§ 80.34, 80.36, 80.37.3, 80.40, 80.42 (2022). See 9 GUAM CODE ANN. § 1.18(c), (d) (2022).

A petty misdemeanor is an offense that carries a maximum sentence of imprisonment of not more than 60 days. 9 GUAM CODE ANN. § 80.34 (2022). See 9 GUAM CODE ANN. § 1.18(e) (2022).

19 8 GUAM CODE ANN. § 1.11 (2022). For the definition of and laws applicable to a "criminal action," see 7 GUAM CODE ANN. §§ 1106, 1112 (2022); 8 GUAM CODE ANN. § 5.45 (2022).

20 GUAM SUPER. CT LOCAL R. MR 1.1.1(a).

21 Under Guam statutory law, "The legislature created by the Organic Act of Guam shall be known and designated as, 'I Liheslaturan Guåhan.' . . ." 2 GUAM CODE ANN. § 1101 (2022).

Organic Act or other U.S. laws to which Guam is subject,²² and so long as the U.S. Congress does not annul them.²³ Guam *requires* courts to appoint counsel in certain involuntary mental health proceedings and *allows* the courts to appoint counsel for those financially unable to obtain representation in certain other circumstances.²⁴

B. This evaluation

The Guam legislature created the Public Defender Service Corporation as a public corporation “to provide effective legal aid and assistance to those persons in Guam who are unable to afford counsel.”²⁵ The Guam Public Defender Service Corporation requested this evaluation.

The scope of this evaluation is limited to the provision of counsel in adult criminal cases in the Guam trial courts. However, throughout Guam the same indigent defense system must provide representation when appointed in all case-types for which Guam provides a right to counsel. As a result, many of the same indigent defense system lawyers appointed to represent adults in trial-level criminal cases are also appointed in criminal appellate cases, civil cases in the trial and the appellate court, juvenile delinquency cases, and some other civil matters. For this reason, it is impossible to segregate the provision of services in adult criminal trial-level cases on Guam from the other services provided by Guam’s indigent defense system, as explained when necessary throughout this report.

The Sixth Amendment Center (6AC) conducted this evaluation beginning in November 2022.

Methodology. 6AC uses Sixth Amendment case law and national standards for right to counsel services as the uniform baseline measure for providing attorneys to indigent people, along with the requirements of local and federal laws. 6AC evaluates indigent defense systems through four basic components:

- *Legal research and analysis.* Every state and land that is part of or associated with the United States has its own substantive and procedural law through its constitution, statutes, rules, regulations, and case law. 6AC independently researches the relevant law of the jurisdiction and the courts operating within it and analyzes its internal interactions and its interactions with federal law and national standards, in order to understand and explain the workings of the indigent defense system being evaluated.
- *Data collection and analysis.* Information about how a jurisdiction provides right to counsel services

22 48 U.S.C. § 1423a (2022). “States are free to provide greater protections in their criminal justice system than the Federal Constitution requires,” but they cannot provide less. *California v. Ramos*, 463 U.S. 992, 1014 (1983). See, e.g., *Oregon v. Hass*, 420 U.S. 714, 719 (1975); *Cooper v. California*, 386 U.S. 58, 62 (1967); *O’Connor v. Johnson*, 287 N.W.2d 400, 405 (Minn. 1979) (“The states may, as the United States Supreme Court has often recognized, afford their citizens greater protection than the safeguards guaranteed in the Federal Constitution. Indeed, the states are ‘independently responsible for safeguarding the rights of their citizens.’”); *South Dakota v. Opperman*, 247 N.W.2d 673, 674 (S.D. 1976) (“There can be no doubt that this court has the power to provide an individual with greater protection under the state constitution than does the United States Supreme Court under the federal constitution.”).

23 48 U.S.C. § 1423i (2022).

24 10 GUAM CODE ANN. § 82301 (2022); 19 GUAM CODE ANN. § 13308 (2022); GUAM SUPER. CT LOCAL R. MR 1.1.1.(b).

25 12 GUAM CODE ANN. § 11103 (2022).

exists in a variety of forms, from statistical information to policies and procedures. The Supreme Court and the Superior Court of Guam, the Judicial Council, the Public Defender Service Corporation, and many individuals provided information critical to this evaluation. 6AC obtained and analyzed extensive amounts of hard copy and electronic information from all of these sources.²⁶

- *Court observations.* Right to counsel services involve interactions among at least three critical processes: (1) the process a defendant experiences as their case advances from accusation through disposition; (2) the process the appointed attorney experiences while representing each person at the various stages of a case; and (3) the substantive laws and procedural rules that govern the justice system in which indigent representation is provided. 6AC remotely observed criminal proceedings, including magistrate hearings, arraignments, pretrial conferences, guilty pleas, status hearings, and probation violation hearings. In total, 6AC observed 167 proceedings in front of seven judges/magistrates over ten days during the spring and fall of 2023.
- *Interviews.* No individual component of the justice system operates in a vacuum. Rather, the policy decisions of one component necessarily affect another. Because of this, 6AC conducted interviews orally and in writing with a broad cross-section of stakeholders throughout the island, including 82 individual judges and magistrates, court clerks, former prosecutors, corrections and probation officials, staff and board of the Public Defender Service Corporation, and private attorneys appointed to represent indigent people.

This report. The first step in evaluating right to counsel services in any jurisdiction is to understand the broader criminal justice system within which the indigent defense system operates. Chapters II through V provide this understanding. Chapter II describes Guam's judicial system and the prosecution function. Chapter III explains the prevailing caselaw and standards used in the assessment of Guam's indigent defense services. Chapter IV describes the structure and funding of Guam's indigent defense system, and Chapter V explains the process of a criminal case throughout which the indigent defense system must effectively represent appointed clients.

Chapters VI through IX contain our findings on: the presence of counsel at critical stages of a case (Chapter VI); qualified, trained, and supervised attorneys (Chapter VII); sufficient time and resources (Chapter VIII); and independence and the oversight of the defense function (Chapter IX).

Chapter X discusses the recommendations for overcoming the issues identified in the preceding chapters.

²⁶ 6AC acknowledges and appreciates the efforts made by Guam's justice system stakeholders in providing requested information, particularly in light of the difficulties faced by the people of Guam during and after Typhoon Mawar.

CHAPTER II

The Courts & Prosecution

This chapter describes the judicial branch of Guam's government, the courts, and the prosecution function. Because the people of Guam did not have the freedom to govern themselves for most of the past 400 years,²⁷ Guam's history is important in understanding the development of its justice system.

A. Brief history of Guam's justice system

Spain laid claim to Guam in the 1600s, leading to the Chamoru-Spanish War lasting from 1668 through 1695. Spain then governed the island until 1898, when Spain ceded Guam to the United States under the *Treaty of Paris of 1898* at the close of the Spanish-American war, without input from the native inhabitants of Guam.²⁸ Therefore, Spanish law and courts operated on Guam for hundreds of years before the U.S. placed Guam under the control of the U.S. Navy.²⁹

Beginning in 1910, the earliest Guam courts under U.S. naval authority were the Island Court, the Police Court, the Court of Equity, the Higher Court of Equity, and the Special Courts.³⁰ These courts had jurisdiction over the trial-level civil and criminal cases arising under local Guam law, but it was unclear what court if any had appellate jurisdiction. A Court of Appeals was established by 1941 to hear appeals from all of the lower Guam courts.³¹ Then World War II threw everything into disarray.

Japan seized Guam on December 8, 1941.³² There was widespread forced labor, incarceration, torture, and massacre of the Chamorro under Japanese Occupation until July 21, 1944.³³ After the United States recaptured the island in 1944, it returned the control of Guam to the U.S. Navy, and then transferred control to the U.S. Secretary of the Interior on July 1, 1950.³⁴

27 See 3 GUAM CODE ANN. § 21000 (2022) ("It is the intent of *I Liheslaturan Guåhan* to permit the native inhabitants of Guam, as defined by the U.S. Congress' 1950 Organic Act of Guam to exercise the inalienable right to self-determination of their political relationship with the United States of America. *I Liheslaturan Guåhan* finds that the right has never been afforded the native inhabitants of Guam, its native inhabitants and land having themselves been overtaken by Spain, and then ceded by Spain to the United States of America during a time of war, without any consultation with the native inhabitants of Guam."). The Chamorro people have inhabited the island of Guam for approximately 3500 years. Guam maintains a Chamorro Registry for all persons who are descendants of the people born on the island prior to 1800 or living there on April 11, 1899. 3 GUAM CODE ANN. §§ 18001, 18002, 18003, 18010 (2022).

28 Treaty of Peace, U.S. – Spain, Dec. 10, 1898.

29 U.S. Exec. Order 108-A (Dec. 23, 1898).

30 JUDICIARY OF GUAM, *Judicial History – Historical Review: "Justicia para todo,"* <http://www.guamsupremecourt.com/Judicial-History/Judiciary%20History.pdf>. Many of the judges appointed to these courts were native Chamorro who had served as judges in the Spanish courts.

31 JUDICIARY OF GUAM, *Judicial History – Historical Review: "Justicia para todo,"* <http://www.guamsupremecourt.com/Judicial-History/Judiciary%20History.pdf>.

32 This was the same day that Pearl Harbor was bombed. The U.S. attributes the bombing of Pearl Harbor to having occurred on December 7, 1941, but it was already "tomorrow" in Guam, so Guam attributes the invasion of their island to having occurred on December 8, 1941.

33 July 21, 1944, is celebrated annually as the legal holiday of "Liberation Day." 1 GUAM CODE ANN. § 1011 (2022).

34 U.S. Exec. Order 1077 (Sept. 7, 1949).

The *Organic Act of Guam* was signed into law in August 1950 and created Guam's government anew.³⁵ The First Guam Legislature convened the next year³⁶ and abolished some of the existing local courts and reorganized others, resulting in three courts with trial-level jurisdiction over local law: the Island Court, the Police Court, and the Commissioner's Court.³⁷

In 1974, the Guam legislature again reorganized the Guam courts into much the same form as they exist today, with a single superior court having all trial-level jurisdiction over local law and a single supreme court having jurisdiction over appeals from the superior court.³⁸ It would be another thirty years though before the structure and powers of the local courts of Guam were solidified when the *Organic Act of Guam* was amended in October 2004.³⁹

B. The judicial branch

The *Organic Act of Guam* mandates that the judicial branch of Guam is “a unified judicial system” that includes the Supreme Court of Guam and the Superior Court of Guam. The Guam legislature is authorized to establish additional lower local courts,⁴⁰ although no other lower courts currently exist.⁴¹ Guam law has also created a judicial council with significant administrative authority over the courts and the system for providing the right to appointed counsel.⁴²

1. Judicial Council

The judicial council was created by statute as a policy-making and administrative body for the judicial branch of Guam⁴³ when the First Guam Legislature⁴⁴ created the first Guam government under U.S. authority.⁴⁵ The judicial council has five members,⁴⁶ including all three supreme court justices (the chief

35 Organic Act of Guam of 1950, Pub. L. No. 81-630, 64 Stat. 384.

36 2 GUAM CODE ANN. § 1117 (2022).

37 Judiciary Act of 1951, Guam Pub. L. 1-17.

38 Court Reorganization Act of Jan. 16, 1974, Guam Pub. L. 12-85.

39 Act of Oct. 30, 2004, Pub. L. 108-378, 118 Stat. 2206 (amending the Organic Act of Guam to clarify the local judicial structure).

40 48 U.S.C. § 1424 (2022). The congressionally established District Court of Guam continues with jurisdiction over federal law, but its operations and proceedings are not the subject of this evaluation.

41 7 GUAM CODE ANN. § 3101 (2022). See 5 GUAM CODE ANN. § 3201 (2022).

42 7 GUAM CODE ANN. §§ 2101(a), 5101, 5102 (2022).

43 7 GUAM CODE ANN. §§ 5101, 5102 (2022).

44 Under Guam statutory law, “The legislature created by the Organic Act of Guam shall be known and designated as, ‘*Liheslaturan Guåhan*.’ . . .” 2 GUAM CODE ANN. § 1101 (2022).

45 Judiciary Act of 1951, Guam Pub. L. 1-17. At that time, the judicial council served as a sort of collaborative body to improve the practice, procedure, and administration of and in the courts, and the members at that time were the judge of the District Court of Guam, the chief judge of the Island Court, the chairman of the legislature's Committee on the Judiciary, the Attorney General of Guam, and the president of the Bar Association of Guam. Judiciary Act of 1951 §§ 121 - 124, Guam Pub. L. 1-17.

46 7 GUAM CODE ANN. § 5101(a), (c) (2022); Guam Judicial Council, *Rules of Conduct and Operation* arts. 1.02, 2 (adopted Nov. 20, 2003, and signed Dec. 11, 2003). The chief justice designates judicial branch employees to serve as secretary and assistant secretary, attending meetings and recording the activity during meetings. Guam Judicial Council, *Rules of Conduct and Operation* art. 2.05 (adopted Nov. 20, 2003, and signed Dec. 11, 2003).

justice is the chairperson) and two superior court judges (the presiding judge and one other judge appointed by the presiding judge for a three-year term). At least three votes are necessary for action by the judicial council.⁴⁷

The judicial council is responsible for, among other things:⁴⁸

- making policies for the courts;
- making policies and rules for the operations of the courts (including personnel, procurement, facilities & property, travel, and finances);
- reviewing and approving the budget for the courts;
- determining the compensation of classified and unclassified employees in the judicial branch;
- adopting court filing fees and other court fees, and garnishing tax refunds for court-ordered obligations;
- establishing rules & regulations for claims brought by classified employees of the courts;
- overseeing claims of judicial misconduct.

The judicial council also appoints the administrator of the courts, who is responsible for the general supervision of all judicial branch employees other than the judges, judicial officers, and their immediate staff.⁴⁹

2. Supreme Court of Guam

Despite the establishment of a supreme court in 1974, the current Supreme Court of Guam is a more recent development.⁵⁰

47 7 GUAM CODE ANN. § 5101(d) (2022). Despite the statutory requirement that three votes are necessary for action, the judicial council's self-made rules allow for action by only two votes whenever there is a vacancy on the supreme court. Guam Judicial Council, *Rules of Conduct and Operation* art. 1.08 (adopted Nov. 20, 2003, and signed Dec. 11, 2003).

48 7 GUAM CODE ANN. § 5102 (2022); Guam Judicial Council, *Rules of Conduct and Operation* art. 4 (adopted Nov. 20, 2003, and signed Dec. 11, 2003).

49 7 GUAM CODE ANN. § 7103(c) (2022).

50 The U.S. Supreme Court decided in *Guam v. Olsen* that the Guam legislature lacked authority under the *Organic Act* to “transfer” any appellate jurisdiction from the District Court of Guam, including for appeals from the local Guam trial courts, and that only the U.S. Congress had that power. *Guam v. Olsen*, 431 U.S. 195 (1977). This abolished the Guam Supreme Court.

In 1984, the U.S. Congress amended the *Organic Act* to expressly allow the Guam legislature to establish an appellate court and give it jurisdiction to hear appeals from the local Guam courts. Act of Oct. 5, 1984, §§ 801 - 803, Pub. L. 98-454, 98 Stat. 1732 (among other things, amending sections 22 and 24 of the Organic Act of Guam). This left the Guam legislature with the power to establish (and to control the powers of or subsequently abolish altogether) Guam's highest local court.

Through a bill passed January 14, 1993, the Guam legislature again restructured its judicial branch and established the Supreme Court of Guam as “the highest court of Guam” with jurisdiction over appeals from the superior court. Frank G. Lujan Memorial Court Reorganization Act of 1992, Guam Pub. L. 21-147 (Jan. 14, 1993). The justices of the supreme court were sworn into office in March 1996. See Guam Judicial Council Resolution No. JC04-008, *Relative to Supporting an Amendment to the Organic Act of Guam to Clarify the Local Judicial Structure of Guam* (adopted Apr. 30, 2004 and signed May 6, 2004). Two things stood in the way of the supreme court coming fully into its operations and authority: a) Before the supreme court could begin exercising its appellate jurisdiction, it would have to certify that it was “fully ready to accept the jurisdiction conferred upon it;” and, b) the Guam governor, legislature, and courts did not always fully agree about what it meant to be “the highest court of Guam,” particularly in the exercise of administrative authority over the judicial branch of government.

Almost immediately, the Guam legislature amended the law in April 1996, altering the respective administrative authority of the supreme court and of the judicial council and changing the composition of the judicial council. See, e.g., Act of Apr. 19, 1996, Guam Pub. L. 23-86 (relating to the composition, duties, and powers of the judicial council).

Following a somewhat difficult decade among the three branches of Guam's government, after overriding a gubernatorial veto, on October 31, 2003, the legislature again reorganized the judicial branch “as the third co-equal and independent branch of

The Supreme Court of Guam is the island's highest court.⁵¹ It has jurisdiction over all appeals arising out of the lower courts of Guam.⁵² The supreme court has supervisory jurisdiction over all local Guam courts and is responsible for governing the administration, practice, and procedures in all Guam courts, as well as governing the practice of law on Guam.⁵³ Guam statutes provide that the supreme court has “supervisory, but not administrative authority” over all other local courts, which must be exercised “in accordance with rules and regulations promulgated by” the judicial council,⁵⁴ and the supreme court is required to enact certain types of rules for the operations of the superior court.⁵⁵

The supreme court has three full-time justices, who are each appointed by *I Maga'låhen Guåhan* (the governor)⁵⁶ with advice and consent of the legislature to an initial 10-year term and then stand for additional terms through retention elections.⁵⁷ The three justices choose one among themselves to serve as chief justice for three years, with the position rotating every three years.⁵⁸

3. Superior Court of Guam

The superior court is the only trial court of Guam.⁵⁹ It has all jurisdiction over Guam law that is not given to the supreme court.⁶⁰ While there is only one superior court, it operates several specialized divisions,⁶¹ in addition to exercising its general trial-level jurisdiction.

government.” Act of Oct. 31, 2003, Guam Pub. L. 27-31 (relative to the judiciary and its operations). On the one hand, the bill stated the intent “to recognize and empower the Supreme Court of Guam as the highest Court of Guam with oversight over the Judicial Branch.” Act of Oct. 31, 2003, § 2, Guam Pub. L. 27-31 (relative to the judiciary and its operations). On the other hand, the bill stated that “[w]ith the passage of this Act, the Judicial Council of Guam shall serve as head of the Judicial Branch of government for Guam.” Act of Oct. 31, 2003, § 1, Guam Pub. L. 27-31 (relative to the judiciary and its operations).

Guam’s delegate to the U.S. Congress, with support of Guam policymakers, repeatedly asked Congress to amend the *Organic Act* to clarify the local judicial structure of Guam. See Guam Judicial Council Resolution No. JC04-008, *Relative to Supporting an Amendment to the Organic Act of Guam to Clarify the Local Judicial Structure of Guam* (adopted Apr. 30, 2004, and signed May 6, 2004). On October 30, 2004, the U.S. Congress amended the *Organic Act of Guam* to declare the structure and jurisdiction of the local courts of Guam. Act of Oct. 30, 2004, Pub. L. 108-378, 118 Stat. 2206 (amending the Organic Act of Guam to clarify the local judicial structure). Going forward, the existence, jurisdiction, and powers of the Supreme Court of Guam could no longer be altered by the Guam legislative and executive branches of government.

51 48 U.S.C. § 1424-1 (2022); 7 GUAM CODE ANN. §§ 1101.1, 2101(a), 3102 (2022).

52 48 U.S.C. § 1424-1 (2022); 7 GUAM CODE ANN. §§ 3107, 3108 (2022).

53 48 U.S.C. § 1424-1 (2022); 7 GUAM CODE ANN. § 3107 (2022).

54 7 GUAM CODE ANN. §§ 2101(a), 3107 (2022).

55 7 GUAM CODE ANN. § 4101 (2022).

56 Under Guam statutory law, “The Governor of Guam, created by the Organic Act of Guam, *shall* be known, and designated as, ‘*I Maga'låhen Guåhan*.’ . . .” 5 GUAM CODE ANN. § 1510 (2022).

57 7 GUAM CODE ANN. §§ 3103(a), 3109(a), 6101 (2022). All justices must be a U.S. citizen, a resident of Guam for at least five years, and in the active practice of law for at least 10 years. 7 GUAM CODE ANN. § 3109(c) (2022). Justices may not practice law privately while holding office nor be in partnership with a practicing attorney. 7 GUAM CODE ANN. § 3109(d), 6110 (2022).

58 7 GUAM CODE ANN. § 3103(a), (i), (j) (2022).

59 48 U.S.C. § 1424 (2022); 7 GUAM CODE ANN. § 2101 (2022).

60 48 U.S.C. § 1424-1(d) (2022); 7 GUAM CODE ANN. § 3105, 4101(b) (2022).

61 7 GUAM CODE ANN. § 2101 (2022). The specific jurisdiction of each of these individual divisions of the superior court is established by statute, and the superior court has appellate jurisdiction over certain cases heard at the trial level in its traffic division and its small claims division. 7 GUAM CODE ANN. § 4102 (2022). The supreme court is expressly authorized to create other divisions of the superior court. 7 GUAM CODE ANN. § 2101(a) (2022).

There are eight full-time judges in the superior court,⁶² who are each appointed by the governor with advice and consent of the legislature to an initial seven-year term and then stand for additional terms through retention elections.⁶³ At some future time, the judges will elect one among themselves to serve as presiding judge for three years, with the position rotating every three years. However, the current presiding judge has held that position since July 1988, and will continue to do so for so long as he is retained as a superior court judge every seven years and remains in office.⁶⁴ In addition to judges, other judicial officers can be appointed to serve the superior court.⁶⁵ There are two magistrate judges,⁶⁶ one family court referee,⁶⁷ and one administrative hearing officer.

62 From 1993 to 2023, the superior court had seven judges, in accordance with statutory law. 7 GUAM CODE ANN. § 4101(a) (2022). It is up to the judicial council to decide when more judges are needed for the superior court and then request the governor to appoint the additional number necessary. 7 GUAM CODE ANN. § 4101(b) (2022). Likewise, a vacant judgeship can remain vacant for so long as the judicial council determines it is not necessary to fill it. 7 GUAM CODE ANN. § 4101(c) (2022).

The eighth superior court judge was added on March 1, 2023, seven years after the judicial council, through the chief justice, first and then repeatedly requested the governor to appoint an additional judge to the court. Guam Judicial Council Resolution No. JC16-006, *Relative to the Need to Appoint an Eighth Judge to the Superior Court of Guam* (adopted Apr. 7, 2016 and signed May 3, 2016) (noting the last superior court judgeship was created in 1993); Guam Judicial Council Resolution No. JC18-002, *Relative to Affirming the Continuing Need to Appoint an Eighth Judge for the Superior Court of Guam* (adopted Jan. 11, 2018 and Jan. 17, 2018); Guam Judicial Council Resolution No. JC19-004, *Relative to Affirming the Continuing Need to Appoint an Eighth Judge for the Superior Court of Guam* (adopted Feb. 21, 2019 and Mar. 7, 2019).

63 7 GUAM CODE ANN. §§ 3103(a), 3109(a), 4101(a), 6101(b) (2022). All judges must be a U.S. citizen, a resident of Guam for at least five years, and in the active practice of law for at least seven years. 7 GUAM CODE ANN. § 3109(c) (2022). Judges may not practice law privately while holding office nor be in partnership be a practicing attorney. 7 GUAM CODE ANN. § 3109(d), 6110 (2022).

64 7 GUAM CODE ANN. § 4101(a) (2022).

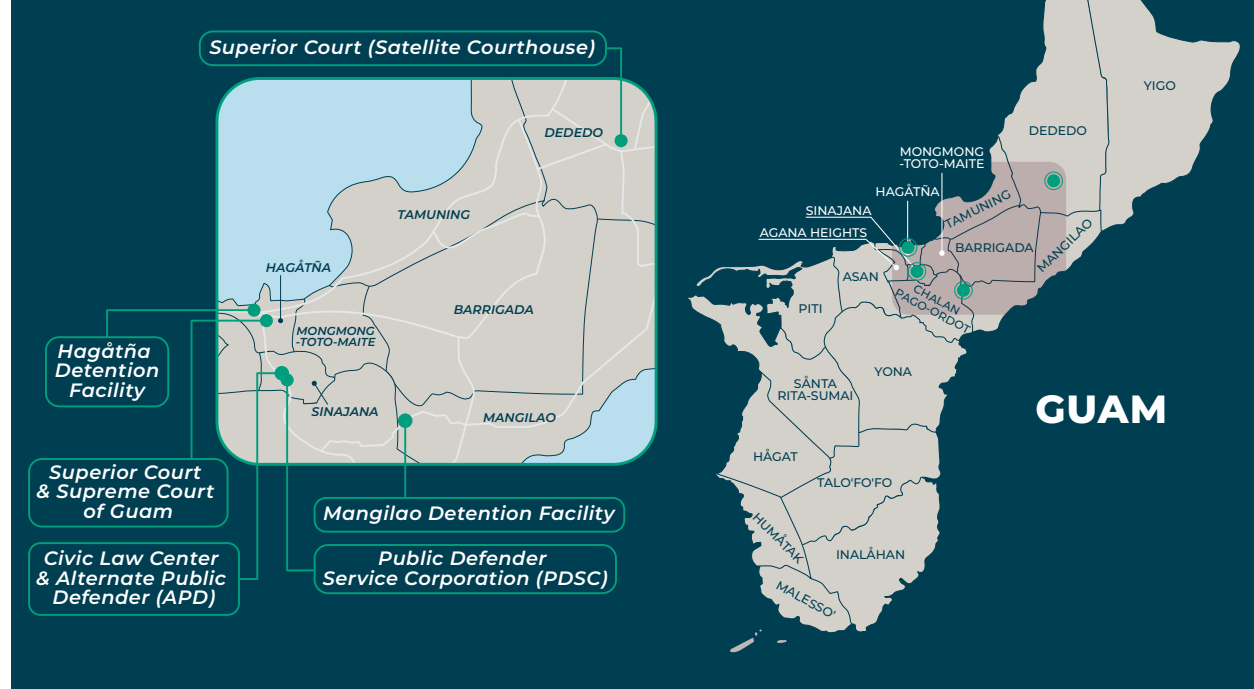
65 7 GUAM CODE ANN. § 4401 (2022) (magistrates). 7 GUAM CODE ANN. §§ 7119, 7119.1 (2022); 19 GUAM CODE ANN. § 5113 (2022) (referees).

66 A magistrate must meet the qualifications required for a judge (be a U.S. citizen, a resident of Guam for at least five years, and in the active practice of law for at least seven years, 7 GUAM CODE ANN. § 3109(c) (2022); and may not practice law privately while holding office nor be in partnership be a practicing attorney, 7 GUAM CODE ANN. § 3109(d), 6110 (2022)), and be at least 30 years old, never convicted of a felony or a misdemeanor involving moral turpitude, and not related to a judge or justice at the time of initial appointment. Magistrates are appointed to a four-year term (removable for cause) by the chief justice with the approval of the governor, from a list of three candidates submitted by the Guam Bar Association. Magistrates cannot be paid more than 90% of the salary paid to judges. 7 GUAM CODE ANN. § 4401 (2022).

67 A referee must be a licensed Guam attorney. Referees are approved by the judicial council on nomination of the chief justice, and the judicial council establishes their duties and compensation. 7 GUAM CODE ANN. §§ 7119, 7119.1 (2022); 19 GUAM CODE ANN. § 5113 (2022).

Courthouses

There are two Guam courthouses. The supreme court and the superior court both hold sessions at the main courthouse in Hagåtña, known as the Guam Judicial Center. All of the superior court judges and judicial officers except for one magistrate sit only at the Hagåtña courthouse. The Northern Court Satellite opened in Dededo in 2014. The only cases heard there are civil, traffic, debt, and magistrate hearings/first appearances. Only one of the two magistrates conducts proceedings at the satellite courthouse, while all other judges and judicial officers only preside at the main courthouse in Hagåtña.



C. Prosecution

The attorney general, elected island-wide to a four-year term, is the chief legal officer of the government of Guam and the head of the Office of the Attorney General.⁶⁸ The attorney general establishes the budget for the office, administers any federal funding and programs, approves its expenditure of funds, and selects the personnel employed by it.⁶⁹ The attorney general is responsible for the prosecution of all offenses (both crimes and violations) against the laws of Guam.⁷⁰ The attorney general also, among other things, represents the government of Guam in all civil actions, is legal counsel for the mayors' council, and defends officers and employees of the government against damages for performance of official acts.⁷¹

68 48 U.S.C. § 1421g(d) (2022); 5 GUAM CODE ANN. §§ 3102, 30101(a) (2022). The attorney general must be at least 30 years old, a U.S. citizen and resident of Guam, a licensed Guam attorney for at least five years, and never convicted of a felony or suspended from the practice of law for a violation of ethical rules. 5 GUAM CODE ANN. § 30101(b) (2022). While in office, the attorney general cannot defend or assist in the defense of any criminal action. 5 GUAM CODE ANN. § 30112 (2022).

69 5 GUAM CODE ANN. §§ 30106, 30109(h), (i), (j), (k), 30121.1, 30121.2 (2022).

70 5 GUAM CODE ANN. §§ 30104, 30109(a) (2022).

71 5 GUAM CODE ANN. §§ 30102, 30108, 30109(c), 30117 (2022).

Funding for the office is primarily through an annual legislative appropriation.⁷² The Department of Administration must distribute to the office no less than 1/12 of the appropriated budget each month, which is deposited to the “Office of the Attorney General Operations Fund.”⁷³

Beginning in January 2023, the attorney general's office is divided into six divisions.⁷⁴ Each division has a car, mostly used by investigators but sometimes by attorneys. The attorney general's office has various support staff, such as victim advocates, investigators, a process officers unit (to do court runs, obtain documents, serve notices to appear, and subpoena witnesses), accountants, project coordinators (to assist in federal grants), paralegals, secretaries, legal clerks, office clerks, and receptionists.

All attorneys employed by the office are prohibited from the practice of law outside of their employment (subject to minor exceptions).⁷⁵ Attorneys who serve as prosecutors are entitled to “special pay” of an additional 15% beyond their regular wage rate,⁷⁶ so prosecuting attorneys are paid 15% more than the attorneys employed by the Public Defender Service Corporation.

In 2023, the attorney general's office experienced an attorney shortage, and as a result attorneys within the office who do not have criminal law experience are being required to prosecute. In addition, to make up for the shortage of attorneys, the attorney general's office reportedly is contracting with private attorneys to serve as part-time prosecutors in criminal cases, which appears to contravene the statutory requirement that attorney general's office attorneys may not practice law outside of the attorney general's office.⁷⁷

⁷² 5 GUAM CODE ANN. § 30118 (2022).

⁷³ 5 GUAM CODE ANN. § 30118.1 (2022). General appropriation funds that are unspent at the end of the fiscal year, referred to as “lapsed funds,” are retained by the office.

⁷⁴ The divisions are: a) administrative: responsible for office functions and budgets; b) general crimes: prosecutes adult criminal and juvenile delinquency cases; c) consumer protection: prosecutes matters of consumer fraud and handles matters of restitution at the close of a criminal case; d) victims services: supports victims by providing information about cases in which they are victims (e.g., when the defendant in the case is getting released from jail) and informing victims of their rights; e) civil: defends the government against lawsuits filed against the government and provides legal advice and representation to the government; and, f) child support: assists parents with obtaining child support payments and court orders for financial support.

Under the previous attorney general's administration, there were separate divisions for family (which included juvenile delinquency and mental health matters) and prosecution, which are now merged into the general crimes division. There were also separate divisions for civil litigation and civil solicitor, which are now merged into the civil division.

⁷⁵ 5 GUAM CODE ANN. § 30113 (2022).

⁷⁶ 5 GUAM CODE ANN. § 30104.1 (2022).

⁷⁷ 5 GUAM CODE ANN. § 30113 (2022).

CHAPTER III

Assessment Criteria

The Sixth Amendment Center independently and objectively evaluates indigent defense systems using U.S. Supreme Court caselaw and national standards for right to counsel services as the uniform baseline measurements for providing attorneys to indigent defendants.⁷⁸ The use of standards as a basis for evaluation of government services is familiar to most governmental officials. After all, for many decades policymakers have ordered minimum safety standards in all proposals to build a new courthouse, provide a fleet of city buses, or construct a new state highway overpass. Our Constitution demands that the threat of taking an individual's liberty is given at least the same level of concern and care.

The criteria used to assess the effectiveness of indigent defense systems and the attorneys who work within them come primarily from two U.S. Supreme Court cases that were decided on the same day and which taken together describe the tests used to determine the constitutional effectiveness of right to counsel services: *United States v. Cronin*⁷⁹ and *Strickland v. Washington*.⁸⁰

Strickland is applied after a criminal case is final to determine retrospectively whether the lawyer provided ineffective assistance of counsel, applying a two-pronged test of whether the appointed lawyer's actions were unreasonable and prejudiced the outcome of the case. *Cronin* is applied at the outset of a criminal case and explains that, if certain factors in an indigent defense system are present (or necessary factors are absent), then a court should presume that ineffective assistance of counsel will occur.

The U.S. Supreme Court explains in *Cronin* that a deficient indigent defense can cause any lawyer – even the best lawyer – to perform in a non-adversarial way. The Court calls this a “constructive” denial of counsel.⁸¹ The overarching principle in *Cronin* is that the process must be a “fair trial” in which the defense function must put the prosecution's case to the “crucible of meaningful adversarial testing.”⁸² If a defense attorney is either incapable of challenging the state's case or barred from doing so because of a structural impediment, a constructive denial of counsel has occurred.

78 This, along with the requirements of other Sixth Amendment case law and other relevant federal and local laws.

79 466 U.S. 648 (1984).

80 466 U.S. 668 (1984).

81 *Strickland v. Washington*, 466 U.S. 668, 683 (1984) (“The Court has considered Sixth Amendment claims based on actual or constructive denial of the assistance of counsel altogether, as well as claims based on state interference with the ability of counsel to render effective assistance to the accused.”) (citing *United States v. Cronin*, 466 U.S. 648 (1984)).

82 *United States v. Cronin*, 466 U.S. 648, 656-57 (1984) (“The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted – even if defense counsel may have made demonstrable errors – the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated.”).

Cronic explains that the requirement of a fair fight does not necessitate one-for-one parity between the prosecution and the defense. Rather, the adversarial process requires states to ensure that both functions have the resources they need at the level their respective roles demand. As the Court notes: “While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators.”⁸³

U.S. Department of Justice application of assessment criteria. The United States Department of Justice (DOJ) urges this application of *Cronic*.

In September 2014, the DOJ filed a Statement of Interest in a class action lawsuit, *Hurrell-Harring v. New York*,⁸⁴ brought by the New York Civil Liberties Union alleging a systemic denial of counsel in five upstate New York counties.⁸⁵ The Statement of Interest provides DOJ’s expertise to the court on what constitutes a “constructive” denial of counsel under the Sixth Amendment. The DOJ statement establishes that a court does not have to wait for a case to be disposed of and then try to unravel retrospectively whether a specific defendant’s representation met the aims of *Gideon* and its progeny. If it is shown at the outset of a case that state or local governments create structural impediments that make the appointment of counsel “superficial” to the point of “non-representation,” a court can presume prospectively that the representation is ineffective.

Structural impediments enunciated in the DOJ Statement of Interest include (but most assuredly are not limited to): “a severe lack of resources,” “unreasonably high caseloads,” “critical understaffing of public defender offices,” and/or anything else making the “traditional markers of representation” go unmet (i.e., “timely and confidential consultation with clients,” “appropriate investigations,” and adversarial representation, among others).⁸⁶

83 United States v. *Cronic*, 466 U.S. 648, 657 (1984) (quoting United States ex rel. Williams v. Twomey, 510 F.2d 634, 640 (7th Cir. 1975)).

84 Statement of Interest of the United States, *Hurrell-Harring v. New York*, No. 8866-07 (N.Y. Sup. Ct. filed Sept. 1, 2014), available at <https://www.clearinghouse.net/chDocs/public/PD-NY-0002-0010.pdf>.

85 In March 2015, the case settled on the eve of trial with the State of New York agreeing to pay 100% of all indigent defense costs in the counties that were named defendants. Stipulation and Order of Settlement, *Hurrell-Harring v. New York*, No. 8866-07 (N.Y. Sup. Ct. filed Oct. 21, 2014). The state agreed to pay \$5.5 million in attorneys’ fees and costs to the NYCLU and the law firm representing the plaintiffs. The lawsuit settlement has sparked greater advocacy for the state to pick up 100% of all indigent defense costs in the remaining upstate counties.

86 A trial court denied a motion to dismiss the lawsuit, but an intermediate court granted the dismissal. In 2010, the New York Court of Appeals reinstated the lawsuit. (*Hurrell-Harring v. New York*, 930 N.E.2d 217 (N.Y. 2010)). The court found that the complaint alleged claims of both outright denial of the right to counsel and constructive denial of counsel where attorneys were appointed in name only but were unavailable to assist their clients, thus “stat[ing] cognizable Sixth Amendment claims.” “These allegations state a claim, not for ineffective assistance under *Strickland*, but for basic denial of the right to counsel under *Gideon*.”

Quoting *Strickland*, the Court went on to note that “[i]n certain Sixth Amendment contexts, prejudice is presumed. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice.” The Court held that the allegations contained in the class action lawsuit “state claims falling precisely within this described category. . . . Given the simplicity and autonomy of a claim for non-representation, as opposed to one truly involving the adequacy of an attorney’s performance, there is no reason . . . why such a claim cannot or should not be brought without the context of a completed prosecution.” Further, the court observed: “the right that plaintiffs would enforce – that of a poor person accused of a crime to have counsel provided for his or her defense – is the very same right that *Gideon* has already commanded the States to honor as a matter of fundamental constitutional necessity. There is no argument that what was justiciable in *Gideon* is now beyond the power of a court to decide.” *Hurrell-Harring*, 930 N.E.2d at 227.

After seven years of litigation, the lawsuit settled by agreement in October 2014 and was approved by the trial court on March 11, 2015 (Stipulation and Order of Settlement, *Hurrell-Harring v. New York*, 930 N.E.2d 217 (N.Y. Ct. App. 2010) (No. 8866-07)). Under the settlement, the state was required to: (1) pay 100% of the cost in the five named counties; (2) ensure that all

In another Statement of Interest, filed in August 2013 in *Wilbur v. City of Mount Vernon*,⁸⁷ the DOJ comments specifically on the issue of indigent defense attorneys having sufficient time to provide adequate representation. At the heart of the *Wilbur* case was the issue of how excessive appointed caseloads of indigent defense attorneys resulted in deficient representation under the Sixth Amendment to the U.S. Constitution.⁸⁸ At the time the original complaint was filed in 2011, the cities of Mt. Vernon and Burlington, Washington, jointly contracted with two private attorneys to represent indigent defendants in their municipal courts in exchange for a flat annual fee out of which they had to provide all “investigative, paralegal, and clerical services” without any additional compensation. In other words, the more work and non-attorney support they dedicated to their clients’ cases, the less each attorney took home in pay. Each private attorney handled between 950 and 1,150 appointed cases each year, in addition to maintaining a healthy private practice on the side. With such heavy caseloads, the private attorneys were alleged to “regularly fail to return calls” or “meet with” or “interview” their clients and “rarely, if ever, investigate the charges made against” their clients. The cities’ failure to adequately “monitor and oversee” the system the attorneys operated in amounted to a “construct[ive] denial of the right to counsel” as guaranteed under *Gideon*.⁸⁹

The DOJ has twice filed amicus briefs furthering their position on constructive denial of counsel. In September 2015, the DOJ filed an amicus brief in *Kuren v. Luzerne County* in the Pennsylvania Supreme Court.⁹⁰ The *Kuren* class action lawsuit alleged that the county so poorly funded right to counsel services as to constructively deny counsel to the indigent accused. The DOJ amicus brief makes clear that a civil constructive denial of counsel claim is an “effective way for litigants to seek to effectuate the promise of *Gideon*,” and “[p]ost-conviction claims cannot provide systemic structural relief that will help fix the problem of under-funded and under-resourced public defenders.”⁹¹

indigent defendants are represented by counsel at their arraignment; (3) establish and implement caseload standards for all attorneys; and (4) assure the availability of adequate support services and resources.

87 Statement of Interest of the United States, *Wilbur v. City of Mount Vernon*, No. C11-1100RSL (W.D. Wash., filed Aug. 14, 2013), available at <http://www.justice.gov/crt/about/spl/documents/wilbursoi8-14-13.pdf>.

88 “The notes of freedom and liberty that emerged from *Gideon*’s trumpet a half a century ago cannot survive if that trumpet is muted and dented by harsh fiscal measures that reduce the promise to a hollow shell of a hallowed right.” *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122 (W.D. Wash. 2013). Thus concluded U.S. District Judge Robert Lasnik in the court’s decision granting injunctive relief against the Washington cities of Mount Vernon and Burlington for “regularly and systematically” providing deficient right to counsel services to the indigent accused. Announcing that “adversarial testing of the government’s case” was so infrequent as to be a “non-factor in the functioning of the Cities’ criminal justice system,” the court found the appointment of counsel in Mount Vernon and Burlington to be “little more than a formality,” resulting in plea bargains having almost nothing to do with the individualized nature of each case. Importantly, the court found the cities culpable because this lack of adversarial testing of the prosecution’s cases was “natural, foreseeable, and expected,” given the deficient structure of indigent defense services.

89 Pointing to the *ABA Ten Principles of a Public Defense Delivery System*, the DOJ urged the court to consider that every jurisdiction should have caseload controls, but that:

caseload limits alone cannot keep public defenders from being overworked into ineffectiveness; two additional protections are required. First, a public defender must have the authority to decline appointments over the caseload limit. Second, caseload limits are no replacement of a careful analysis of a public defender’s *workload*, a concept that takes into account all of the factors affecting a public defender’s ability to adequately represent clients, such as the complexity of cases on a defender’s docket, the defender’s skill and experience, the support services available to the defender, and the defender’s other duties.

Statement of Interest of the United States at 9, *Wilbur v. City of Mount Vernon*, No. C11-1100RSL (W.D. Wash., filed Aug. 14, 2013).

90 Brief for the United States as Amicus Curiae in Support of Appellants, *Kuren v. Luzerne County*, Nos. 57 MAP 2015 (Pa., filed Sept. 10, 2015), available at <https://www.justice.gov/opa/file/769806/download>.

91 In 2016, Pennsylvania’s high court ruled that indigent defendants have the right to prospectively challenge “systemic violations

Most recently, in May 2016, DOJ filed an amicus brief in the Supreme Court of Idaho in *Tucker v. Idaho*,⁹² in which the American Civil Liberties Union of Idaho alleged systemic denial of counsel for the indigent accused. As in *Hurrell-Harring*, the DOJ states in *Tucker* that a “constructive denial of counsel violating *Gideon* occurs where the traditional markers of representation are frequently absent or significantly compromised as a result of systemic, structural limitations.”⁹³

of the right to counsel due to underfunding, and to seek and obtain an injunction forcing a county to provide adequate funding to a public defender’s office,” at the outset of a case before having to suffer from denial of counsel. (*Kuren v. Luzerne County*, 146 A.3d 715, at 718.) The court said it was “obvious” that “the mere existence of a public defender’s office and the assignment of attorneys by that office” was not sufficient to satisfy the right to counsel, because “[i]t is the defense itself, not the lawyers as such, that animates *Gideon*’s mandate.” (*Kuren v. Luzerne County*, 146 A.3d 715, at 735.) If the appointed lawyers cannot provide a defense, “the promise of the Sixth Amendment is broken.” The court observed that “*Strickland* does not limit claims asserting Sixth Amendment violations to the post-conviction context,” and it found that the *Strickland* test of ineffective assistance of counsel should be used by courts in evaluating post-conviction claims, but that “[a]pplying the *Strickland* test to the category of claims at bar would be illogical.” (*Kuren v. Luzerne County*, 146 A.3d 715, at 746).

92 Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellants, *Tucker v. Idaho*, No. 43922-2016 (Idaho, filed May 11, 2016), available at <https://www.justice.gov/crt/file/851311/download>.

93 On April 28, 2017, the Supreme Court of Idaho found that indigent defendants “suffered ascertainable injuries by being actually and constructively denied counsel at critical stages of the prosecution, which they allege are the result of deficiencies in Idaho’s public defense system.” (*Tucker v. Idaho*, No. 43922 at 18.) The alleged injuries are “fairly traceable” to the state and the public defense commission, since the state “has ultimate responsibility to ensure that the public defense system passes constitutional muster.” (*Tucker v. Idaho*, No. 43922 at 9.) Importantly, the court explained that the two-pronged ineffective assistance of counsel test of *Strickland* “is inapplicable when systemic deficiencies in the provision of public defense are at issue. The issues raised in this case do not implicate *Strickland*.” (*Tucker v. Idaho*, No. 43922 at 7.) Instead, the court held the appropriate standard is that of *United States v. Cronin*: “[a] criminal defendant who is entitled to counsel but goes unrepresented at a critical stage of prosecution suffers an actual denial of counsel and is entitled to a presumption of prejudice.” *Tucker v. Idaho*, No. 43922, at 7).

The DOJ has also made clear that its *Cronic* analysis applies equally to juvenile delinquency proceedings, through its Statement of Interest in *N.P. v. Georgia*, filed March 13, 2015. Statement of Interest of the United States, *N.P. v. Georgia*, No. 2014-CV-241025 (Ga. Super. Ct. filed Mar. 13, 2015). In that case, the Southern Center for Human Rights filed the class action lawsuit alleging that children were regularly denied their right to counsel and instead treated to “assembly-line justice” in the Cordele Judicial Circuit. The lawsuit alleged that children regularly appeared in court without lawyers, and those who did receive representation were assigned lawyers who did not have time to talk with them before court. The suit claimed that the Cordele Circuit Public Defender Office was structurally unable to provide meaningful representation due to chronic underfunding and understaffing. The DOJ statement provides the trial court with a *Cronic* framework to evaluate the claims.

A month after the DOJ filed its statement of interest, on April 20, 2015, the defendants in the class action lawsuit – the Georgia Public Defender Standards Council, the Cordele Circuit Public Defender, and the four counties in the circuit – agreed to settle the matter. Consent Decree, *N.P. v. Georgia*, No. 2014-CV-241025 (Ga. Super. Ct. filed Apr. 20, 2015). The approved consent decree seeks to address a number of structural flaws. Specifically, it will: increase the size of the public defender’s office staff; require public defenders to meet with clients (a) within three days of their detainment to determine indigency, and (b) within three days of assignment to their case; and require defenders to receive training, including specific training for juvenile defenders. The consent decree requires public defenders to advise juvenile defendants who seek to waive their right to counsel about what a lawyer could do for them and also requires the public defender office to comply with the terms of the Georgia Indigent Defense Act of 2003 including by creating a specialized juvenile division.

Finally, the DOJ has taken action to enforce the four main principles enumerated in *Cronic*. On April 26, 2012, the DOJ Civil Rights Division delivered a report, *Investigation of the Shelby County Juvenile Court*, to officials in Shelby County (Memphis), Tennessee, stating that the juvenile court of Memphis and Shelby County (JCMSC) “fails to ensure due process for all children appearing for delinquency proceedings” in direct violation of the U.S. Supreme Court’s ruling in *In re Gault*, 387 U.S. 1 (1967). An agreement was reached requiring the county and JCMSC to ensure, among other things, that “juvenile defenders have appropriate administrative support, reasonable workloads, and sufficient resources to provide independent, ethical, and zealous representation to children in delinquency matters” at “all stages of the juvenile delinquency case, including pre-adjudicatory investigation, litigation, dispositional advocacy, and post-dispositional advocacy,” for as long as a case is active. The agreement additionally requires “the promulgation and adoption of attorney practice standards” and the “supervision and evaluation” of defense attorneys “against such practice standards.” United States Department of Justice, Civil Rights Division, Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County (Dec. 17, 2012).

CHAPTER IV

Guam's Indigent Defense System

The structure of Guam's indigent defense system is complex. To simplify the discussion and to explain the intricacies of the current system and recommendations for future structural changes, this report uses terminology that is different than that typically used locally on Guam.

Indigent defense system terminology as used in this report

- "PDSC corporation" – the statutorily-created corporation that is required to defend indigent people who face the potential loss of liberty in criminal or delinquency proceedings, assist in federal land-taking claims, and represent poor people in civil law matters, except where the PDSC corporation attorneys have a conflict of interest.
- "PDSC board" – the statutorily-created board of trustees that is required to oversee the PDSC corporation.
- "PDSC administration" – that portion of the PDSC corporation, including staff and resources, that provides at least some administrative services (e.g., fiscal, human resources, and IT/case management systems) to all divisions of the PDSC corporation.
- "primary division" – a division of the PDSC corporation that includes only the attorneys and non-attorney staff and resources allocated to the representation of appointed clients with whom the primary division attorneys do not have a conflict of interest; this division is what most people on Guam think of as being signified whenever anyone refers to the "PDSC."
- "alternate division" – a division of the PDSC corporation, referred to locally as the "Alternate Public Defender" or the "APD," that includes only the attorneys and non-attorney staff and resources allocated to the representation of appointed clients with whom the primary division attorneys have a conflict of interest and with whom the alternate division attorneys do not have a conflict of interest.
- "PAP standing committee" – the committee created by court rules to oversee the panel attorneys.
- "panel attorneys" – the private attorneys who have agreed to be appointed to represent indigent defendants in certain types of cases when both the primary division and the alternate division have a conflict of interest; referred to locally as the "Private Attorney Panel" or the "PAP."
- "non-panel attorneys" – the private attorneys who are appointed by the courts to represent indigent defendants but who have not agreed to be appointed.

A. Structure of the indigent defense system

There are only two ways in which the government of Guam provides attorneys to represent indigent people in Guam's courts. All appointed attorneys in adult criminal cases are either governmental employees of the Public Defender Service Corporation or they are private attorneys who are appointed by the courts on a case-by-case basis.⁹⁴ While the legislature has mandated these two methods of providing counsel, the legislature left it almost entirely up to the judicial branch to decide how to carry this out.

1. Governmental employees

PDSC corporation. The Guam legislature created the Public Defender Service Corporation as a public corporation “to provide effective legal aid and assistance to those persons in Guam who are unable to afford counsel.”⁹⁵ The PDSC corporation is *required* by statute to:⁹⁶

- “defend indigent persons charged in criminal cases before the courts of Guam” when appointed by the courts;
- “assist and represent in court or otherwise persons who” have federal land takings claims and who meet certain statutory criteria;⁹⁷ and
- “render legal aid and assistance to those persons in Guam, who, . . . are in the greatest economic and social need of legal assistance and representation,” under rules established by the PDSC board of trustees – in other words, to provide representation to the poor in civil law matters both in and out of court.⁹⁸

94 12 GUAM CODE ANN. § 11104 (2022) (“It shall be the duty of the [Public Defender Service] Corporation to defend indigent persons charged in criminal cases before the courts of Guam. . . .”); 8 GUAM CODE ANN. § 45.40 (2022) (“In any criminal action in which a defendant is entitled to be represented by counsel at public expense and the court finds that because of conflict of interest or other reason that the public defender has properly refused to represent the defendant, the court shall appoint private counsel for the defendant and order that counsel receive a reasonable sum for compensation and necessary expenses to be paid by the Treasurer of the Territory.”).

95 12 GUAM CODE ANN. § 11103 (2022).

96 12 GUAM CODE ANN. §§ 11104, 11104.1, 11105, 11106, 11115 (2022).

97 This is a narrow area of civil law matters that arise out of Guam's unique place in history and its relationship to the U.S. federal government. Over decades, many Guam people were deprived of title to real property that they had owned. In some instances, the U.S. government took title to land through judicial condemnation proceedings, but in other instances people were defrauded out of their property titles in some fashion. Between 1944 and 1963, the federal district court on Guam ruled on a number of claims brought by people of Guam regarding their real estate, then in 1977 the U.S. government allowed the decisions in those cases to be reopened to ensure that people were paid fair compensation for their property. See Omnibus Territories Act of 1977, Pub. L. 95-134 § 204, 91 Stat. 1159, 1162 (Oct. 15, 1977) (current version at 48 U.S.C. § 1424c). By the time decisions about those claims were made, many of the original landowners to whom awards were due were deceased and any award would pass to their heirs and assigns. The process of claiming these settlement awards often involves title searches as well as knowledge of probate and inheritance law, and Guam has established some special procedures for addressing some of these awards. See 15 GUAM CODE ANN. §§ 4901 through 4912 (2023).

98 Until late in the 20th century, the PDSC board allowed the PDSC corporation to represent indigent people in a wide array of civil cases, including, for example, immigration, bankruptcy, divorce, probate, eviction, etc. At least as early as 1995, the PDSC board began to limit the types of civil matters that the PDSC corporation could take on because the caseloads of its attorneys had become excessive. Over the years, the PDSC board lifted and reimposed moratoriums on civil matters many times, with each moratorium applying to varying types of cases for varying amounts of time. See, e.g., Guam Public Defender Service Corporation Resolution No. PDSC 96-01, *Lifting the Temporary Limitation of Caseload in Civil and Domestic Cases of the Public Defender Service Corporation* (adopted Mar. 15, 1996); Guam Public Defender Service Corporation Resolution No. PDSC 97-01, *Limiting the Caseload of the Public Defender Service Corporation Temporarily* (adopted Mar. 31, 1997); Guam Public Defender Service Corporation Resolution No. PDSC

The PDSC corporation must accept all the criminal case types in which the courts are required to appoint counsel to represent indigent people unless it has a conflict of interest.⁹⁹ Additionally, Guam courts are allowed in their discretion to appoint counsel to represent indigent people, and the PDSC corporation must accept those appointments if it does not have a conflict of interest in: civil or criminal contempt proceedings where a person faces loss of liberty; proceedings seeking collateral relief from judgment in a criminal matter; and proceedings of any type where a person's rights under the *Organic Act* or the U.S. Constitution “may be substantially infringed without the appointment of counsel.”¹⁰⁰

PDSC board. The PDSC board of trustees oversees the PDSC corporation. The five-member board consists of:¹⁰¹

- the chief justice of the Supreme Court of Guam, who is the chairperson;
- the presiding judge of the Superior Court of Guam, who is the vice-chairperson;
- the president of the Guam Bar Association; and
- two members appointed by the chief justice¹⁰² for a three-year term (who cannot be the attorney general or member of the attorney general's staff and cannot be employees of the PDSC corporation).

The PDSC board approves the budgets for the PDSC corporation and its individual divisions.

Members of the PDSC board explain that their role is “not to interfere or micromanage” but rather to “set policy and guidelines” for the PDSC corporation to ensure it fulfills its legislative duties, including establishing standards for PDSC corporation divisions and rules and regulations regarding employees of the PDSC corporation, including their selection, retention, and compensation.¹⁰³

99-06(2), *Limiting the Caseload of the Public Defender Service Corporation Temporarily* (adopted Nov. 9, 1999); Guam Public Defender Service Corporation Resolution No. PDSC 02-03, *Moratorium Involving Civil and Domestic Cases Due to Budgetary Constraints* (adopted June 3, 2003); Guam Public Defender Service Corporation Resolution No. PDSC 13-12, *Continuation of a Moratorium Involving Civil and Domestic Cases* (adopted Aug. 28, 2012); Guam Public Defender Service Corporation Resolution No. PDSC 05-20, *Lifting a Moratorium Involving Civil and Domestic Cases* (adopted July 28, 2020).

It is difficult to know the types of civil matters that the PDSC corporation is accepting at any particular moment, because the PDSC board typically only identifies particular types of cases that it is prohibiting during a moratorium rather than ever explicitly stating the types of civil matters that it authorizes the PDSC corporation to accept. See, e.g., Guam Public Defender Service Corporation Resolution No. PDSC 13-12, *Continuation of a Moratorium Involving Civil and Domestic Cases* (adopted Aug. 28, 2012) (the PDSC Board imposes “an indefinite continuation of the previous moratorium involving non-criminal cases (with certain exceptions)” and “recogniz[ing] that certain exceptions (i.e., uncontested guardianships, burial of expired bodies, and domestic cases involving violence or the threat of violence) exist,” allows PDSC to continue to accept “[c]ases of this nature” through December 31, 2012, “whereupon this matter will be reviewed for further action”). As of February 2023, the PDSC corporation accepts at least the following types of civil matters: protective orders, guardianships over minors, civil commitments, person in need of services cases involving Child Protective Services a/k/a/ PINS cases, cases where a parent is alleged to be unable to effectively supervise their children a/k/a beyond control cases, name changes, and writs of habeas corpus.

99 GUAM SUPER. CT LOCAL R. MR 1.1.1(a).

100 GUAM SUPER. CT LOCAL R. MR 1.1.1(b).

101 12 GUAM CODE ANN. § 11107 (2022). Three members of the board constitute a quorum. 12 GUAM CODE ANN. § 11107 (2022); *By-laws, PUBLIC DEFENDER SERVICE CORPORATION*, arts. 1.06, 1.08 (as amended through Oct. 27, 2016).

102 Each chief justice is free to use their own approach in determining whom to appoint to these positions. For example, the current chief justice asked at least one former PDSC board member for recommendations before making appointments in 2023, and that same board member had “applied” to serve on the board when they were appointed by a different chief justice several years earlier.

103 4 GUAM CODE ANN. § 4105 (2022); 12 GUAM CODE ANN. § 11110 (2022).

PDSC administration. The PDSC corporation provides administrative services for all its divisions through a single administrative office, including fiscal services, human resources, and information technology/case management services.

At the head of the PDSC administration is the PDSC corporation executive director. The PDSC board is statutorily required to appoint a PDSC corporation executive director, who then serves at the pleasure of the PDSC board.¹⁰⁴ The only qualification established by Guam statutes is that the person appointed must have at least five years' experience practicing law at the time of appointment to the position.¹⁰⁵ There is no formalized or written procedure for how the PDSC board goes about appointing the executive director.¹⁰⁶ When a vacancy occurs, the members of the board at that time decide how the vacancy will be filled.¹⁰⁷

As of fiscal year 2023,¹⁰⁸ the other PDSC administration staff are the deputy director, the administrative director and one administrative assistant, one program coordinator, one human resources person, the chief fiscal officer and one account technician, and two management information systems staff.

The PDSC administration is housed at the primary division location and the employees working in the PDSC administration are designated as employees of the primary division.

PDSC corporation divisions. The PDSC corporation has three separate divisions within its corporate structure, only two of which have direct relevance to this evaluation.¹⁰⁹

¹⁰⁴ 12 GUAM CODE ANN. § 11108 (2022). Guam Public Defender Service Corporation Resolution No. PDSC 13-16, *Reappointment of Attorney Stephen P. Hattori as the Executive Director of the Public Defender Service Corporation* (adopted June 27, 2016). Guam's statutes direct that the executive director is to hold a classified position. 12 GUAM CODE ANN. § 11108 (2022). Despite this requirement, the current executive director holds an unclassified position.

¹⁰⁵ 12 GUAM CODE ANN. § 11108 (2022).

¹⁰⁶ Between 1981 and the present, there have been five PDSC corporation executive directors, whose terms of office were: 1981 through 2003; 2003 through 2008; 2008 through 2011; 2011 through 2016; and the current executive director's term of 2016 through the present. Guam Public Defender Service Corporation Resolution No. PDSC 06-03, *Forming Search Committee for the Selection of a New Director of the Public Defender Service Corporation* (adopted Aug. 19, 2003); Guam Public Defender Service Corporation Resolution No. PDSC 08-03, *Appointment of Attorney Kathleen E. Maher as Director of the Public Defender Service Corporation* (adopted Nov. 18, 2003); Guam Judicial Council Resolution No. JC08-022, *Relative to Commending Kathleen E. Maher for Her Service as the Director of Public Defender Service Corporation* (adopted Sept. 18, 2008); Guam Public Defender Service Corporation Resolution No. PDSC 08-11, *Relative to Extending Our Profound Gratitude to Executive Director Mike Ancheta Nisperos, Jr. for His Outstanding Service to the Public Defender Service Corporation* (adopted July 26, 2011); Guam Public Defender Service Corporation Resolution No. PDSC 12-16, *Relative to Extending Our Profound Gratitude to Executive Director Eric Donn Miller for His Dedicated Service to the Public Defender Service Corporation* (adopted Feb. 25, 2016); Guam Public Defender Service Corporation Resolution No. PDSC 13-16, *Appointment of Attorney Stephen P. Hattori as the Executive Director of the Public Defender Service Corporation* (adopted Feb. 25, 2016); Guam Public Defender Service Corporation Resolution No. PDSC 13-16, *Reappointment of Attorney Stephen P. Hattori as the Executive Director of the Public Defender Service Corporation* (adopted June 27, 2016).

¹⁰⁷ For example, when the position of executive director became vacant during 2003, the board formed a five-member search committee that was charged to announce the opening, solicit applicants, receive applications, interview applicants, and "present a list of the three most qualified applicants" to the full board within 30 days. When the position of executive director was last filled in 2016, it is believed that there were four or five applicants for the position, and members of the board at that time recall questioning applicants during interviews.

¹⁰⁸ The fiscal year for Guam government (and all entities involved in this evaluation) is October 1 through September 30. 5 GUAM CODE ANN. § 4102.1 (2022).

¹⁰⁹ The third division is the civil division, referred to locally as the "Civil Law Center" or "CLC." The PDSC corporation first began referring to this civil division as the Civil Law Center in early 2023. See Public Defender Service Corporation, Fiscal Year 2024 Budget Request at pp. 25, 97-106 (Apr. 26, 2023). Today, the civil division encompasses two subdivisions – The Advocacy Center (TAC), and the Elder Justice Center (EJC) – both of which pre-existed the new naming of the division, and outside of the two subdivisions it provides additional civil legal services including war claims probate, legal guardianship, and burial of expired bodies.

- *Primary division.* The primary division of the PDSC corporation must provide representation in all appointed cases unless the primary division has a conflict of interest. This division is what most people on Guam think of as being signified whenever anyone refers to the “PDSC.”

Both the PDSC corporation executive director and the PDSC corporation deputy director are part of the PDSC administration, with administrative responsibilities for all of the divisions within the PDSC corporation. They are, however, also the managing attorneys for the primary division, and both directly represent defendants to whom the primary division is appointed. For fiscal year 2023, the primary division is authorized to have 17 full-time attorneys, including the executive director and deputy director of the PDSC corporation. As of March 10, 2023, the primary division had only 13 attorneys.

As of April 2023, the primary division also had 31 non-attorney staff: six investigators; one social worker; one law clerk (a “soon-to-be attorney” who has graduated law school but is awaiting their bar exam results); one paralegal; 12 legal secretaries; four legal clerks; three general office clerks; and three process division employees.

- *Alternate division.* Guam’s statutes do not make any mention of the alternate division. This division, known locally as the “Alternate Public Defender (APD),” was created within the PDSC corporation in 2004 through the joint agreement of the judicial council and the PDSC board.¹¹⁰ Guam’s court rules require that the alternate division must be appointed in all cases in which the primary division has a conflict of interest, unless the alternate division also has a conflict of interest.¹¹¹

TAC was originally a single employee of the PDSC corporation who, beginning some time prior to 2011, provided services to victims and survivors of violence (such as obtaining protective orders and restraining orders) as part of a U.S. federal grant known as the “Stop Violence Against Women Program” that today requires some funding from the Guam government. Until early 2023, the PDSC corporation referred to this as the “domestic violence program.” See Guam Public Defender Service Corporation Resolution No. PDSC 01-11, *Advancement of Public Defender Service Corporation’s Operations Fund to the Domestic Violence Program to Cover Program Expenses Pending the Release of Federal Funds* (adopted Feb. 23, 2011); Guam Public Defender Service Corporation Resolution No. PDSC 06-12, *Funding Advance for the Domestic Violence Program* (adopted Dec. 20, 2011); Guam Public Defender Service Corporation Resolution No. PDSC 16-16, *Funding Advance for the Domestic Violence Program* (adopted Apr. 26, 2016); Guam Public Defender Service Corporation Resolution No. PDSC 12-17, *Use of Lapsed Funds for Funding of the Domestic Violence* (adopted Aug. 22, 2017).

EJC was established in 2021 as its own separate division within the PDSC corporation, having begun in 2020 as a six-month pilot project, to provide civil legal services (such as preparing wills or powers of attorney) as part of a pre-existing program operated by the Guam Department of Public Health and Social Services and funded in part by a U.S. federal grant and in part through funds from the Guam government. Guam Public Defender Service Corporation Resolution No. PDSC 06-20, *The Creation of the Elder Justice Center Pilot Program* (adopted July 28, 2020); Guam Public Defender Service Corporation Resolution No. PDSC 01-22, *Establishing the Elder Justice Center as a Permanent Division* (adopted Oct. 26, 2021); Guam Public Defender Service Corporation Resolution No. PDSC 01-23, *Establishing the Elder Justice Center as a Permanent Division* (adopted Oct. 25, 2022).

The entire civil division provides civil representation only (of only certain types to certain categories of clients). The courts do not appoint civil division attorneys to represent indigent defendants. The work of the civil division and its two subdivisions is outside the scope of this evaluation, and further information about the civil division is contained in this report only to the extent that it affects the provision of counsel by the primary division and/or the alternate division attorneys.

¹¹⁰ See “Agreement to Provide Attorney Services for Indigent Defendants,” between the Judicial Council and the Public Defender Service Corporation (June 15, 2004); Guam Judicial Council Resolution No. JC04-009, *Relative to Approving the Proposal of the Public Defender Service Corporation to Create the Alternate Public Defender Office* (adopted Apr. 30, 2004, and signed May 6, 2004) (attaching as Exh. A the PDSC “Proposal For The Establishment Of The Office Of The Alternate Public Defender (rev’d Apr. 20, 2004); and attaching as Exh. B proposed budget for the APD’s first year of operation); Guam Public Defender Service Corporation Resolution No. PDSC 08-04, *Establishment of the Office of the Alternate Public Defender* (adopted Apr. 21, 2004).

¹¹¹ Court rules require the courts to appoint counsel in the order of: “(1) The Public Defender Service Corporation; (2) The Alternative Public Defender Office; (3) The Private Attorney Panel; and (4) Active members of the Guam Bar Association.” GUAM SUPER. CT LOCAL R. MR 1.1.3.(a); Promulgation Order 06-006-01, *Adoption of the Guam Rules of Civil Procedure and Local Rules of the Superior Court of Guam* (Guam May 3, 2007) (attaching as Exh. A the “Guam Rules of Civil Procedure” and attaching as Exh. B the “Local Rules of the

From October 2004 through September 2020, a series of annually renewed contracts between the judicial council and the PDSC corporation established the alternate division anew each year. These written contracts established all of the terms under which the alternate division operated, including but not limited to defining its duties, the terms under which it would be appointed, how it was funded, and who held responsibility for the representation it provided to indigent people.¹¹² Beginning with fiscal year 2021, the judicial council and the PDSC corporation stopped entering into contracts regarding the alternate division.¹¹³ Today, the alternate division's existence and its operation is governed by informal agreement.

The substantive work of the alternate division is overseen by the alternate division's managing attorney (and not by the PDSC corporation's executive director).¹¹⁴ The PDSC board appoints the managing attorney of the alternate division.¹¹⁵ Guam law does not establish any qualifications that a person must have to be appointed as the managing attorney of the alternate division. There is no formalized or written procedure for how the PDSC board goes about appointing the alternate division's managing attorney.¹¹⁶

Superior Court of Guam"). From October 1, 2004, through September 30, 2020, a series of annually renewed contracts between the judicial council and the PDSC corporation each contained a provision stating:

Any case that has been appointed to the PDSC by a Judge or Justice pursuant to the Rules for the Appointment of Counsel for Indigent Defendants which the PDSC reasonably believes it must reject due to a legitimate conflict of interest shall be transferred by the PDSC to the APDD upon the court's approval of the PDSC's written motion to withdraw or, under exigent circumstances, withdrawal may be sought orally while on the record if allowed by the assigned judge or an ex parte judge. APDD shall be appointed directly by the court on cases where the court is aware that PDSC has a conflict of interest at the time of appointment. In the event that a legitimate conflict of interest prohibits the APDD from accepting a case, the APDD shall immediately file a notice to the appointing Judge or Justice indicating its conflict and the case will be further assigned under the Rules for Appointment of Counsel for Indigent Defendants.

See, e.g., "Agreement Between the Judicial Council of Guam and the Public Defender Service Corporation" § 1 (Oct. 1, 2019).

¹¹² See, e.g., "Agreement to Provide Attorney Services for Indigent Defendants," between the Judicial Council and the Public Defender Service Corporation (June 15, 2004); "Agreement Between the Judicial Council of Guam and the Public Defender Service Corporation" (Oct. 1, 2019).

¹¹³ There is no indication as to what prompted this change after nearly two decades, and there is no formal memorialization that this change has occurred (no statutory amendment, no judicial council resolution, no PDSC board resolution).

¹¹⁴ From October 1, 2004, through September 30, 2020, the annually renewed contracts between the judicial council and the PDSC corporation each contained provisions stating:

APDD is an independent division of the PDSC. The APDD acts independently for the purposes of case management. The Executive Director ("ED") of the Public Defender is normally in charge of both the PDSC and the APD, however the ED is not involved in the day-to-day operations of the APDD and does not initiate any promotional or disciplinary actions. Only upon specific recommendations of the APDD supervising attorney may the ED of the PDSC make changes in the salary or working conditions of persons working at the APD. Although the APDD is formally a branch of the PDSC, it operates autonomously, with a separate supervising attorney who is responsible for directing, coordinating, and evaluating the work of attorneys and staff employed by the APD;

and

the supervising attorney in charge of the APDD reports to the Board of Trustees in conjunction with the ED of PDSC and personnel decisions affecting the APDD supervising attorney are reviewed by the Board of Trustees directly. The two offices remain physically apart, the attorneys and staff have no access to each other's files and the MIS computer case management system is completely separate from the main PDSC. Employees of the main PDSC shall not have keys to each other's offices and do have separate office letterheads. The PDSC and the APDD adhere to a well-known policy and this agreement's Standard Operating Procedure (SOP) of keeping all legal activities completely separate;

See, e.g., "Agreement Between the Judicial Council of Guam and the Public Defender Service Corporation" recitals F, G (Oct. 1, 2019).

¹¹⁵ It is a commonly held, but incorrect, belief that the chief justice makes the appointment individually.

¹¹⁶ For example, when the position of the alternate division's managing attorney most recently became vacant in 2007, there was no application process and no selection process, and there does not appear to be any publicly available documentation of the

For fiscal year 2023, the alternate division was authorized to have six full-time attorneys including the managing attorney, but, as of April 2023, the alternate division had 4.5 attorneys (of the six authorized).¹¹⁷ As of the same date, the alternate division also had nine non-attorney staff: two investigators; one management officer; one administrative assistant; one computer operator; two legal secretaries; and two legal clerks.

2. Appointed private attorneys

Under Guam's statutes, if the PDSC corporation is unable to represent a defendant who is entitled to appointed counsel in a criminal case, then the court must appoint a private attorney to represent that defendant.¹¹⁸ The judicial branch has developed two separate mechanisms for appointing private attorneys: panel attorneys and non-panel attorneys.

Panel attorneys. Court rules first authorized the creation of panels of private attorneys to be appointed to represent indigent defendants in 1981.¹¹⁹ Today, "panel attorneys" are private attorneys who have agreed to be appointed to represent indigent defendants in certain types of cases, in exchange for which the attorney is paid an hourly rate but with the possible compensation capped based on the type of case.¹²⁰

Court rules intend for the panel to have five categories of case types (felony; misdemeanor; juvenile, including juvenile delinquency and person in need of services cases; guardian ad litem in juvenile cases; and appellate), with 10 to 15 private attorneys available for appointment in each category.¹²¹

appointment having been made.

¹¹⁷ The part-time attorney is retired from Guam government and, as allowed by Guam statutes, is officially considered a contractor in the alternate division so that he can continue to receive retirement benefits.

¹¹⁸ 8 GUAM CODE ANN. § 45.40 (2022) ("In any criminal action in which a defendant is entitled to be represented by counsel at public expense and the court finds that because of conflict of interest or other reason that the public defender has properly refused to represent the defendant, the court shall appoint private counsel for the defendant and order that counsel receive a reasonable sum for compensation and necessary expenses to be paid by the Treasurer of the Territory.").

¹¹⁹ In 1981, the judicial council adopted rules for "Appointment of Counsel for Indigent Defendants" in cases in the superior court. See *Superior Court of Guam – Appointment of Counsel for Indigent Defendants*, GUAM BAR JOURNAL, vol. 3 & 4, Rainy Season – 1981, at 88; GUAM SUPER. CT LOCAL R. MR 1.1 note.

After the Supreme Court of Guam was established, in 2002 the supreme court repealed those earlier rules and enacted what was known as Rule 13, which provided for a "Private Attorney Panel" to eventually be created. Promulgation Order 02-009, *Amendments to the Rules for Appointment of Counsel for Indigent Defendants* (Guam Nov. 19, 2002). Several steps were necessary before the panel could be established, and until that time "the priority of appointment shall be: Public Defender, court contracted law firms or lawyers, active members of the Guam Bar." Promulgation Order 02-009, *Amendments to the Rules for Appointment of Counsel for Indigent Defendants* (Guam Nov. 19, 2002). In 2004, the supreme court authorized the chief justice to establish an "Interim Private Attorney Panel," from which private attorneys could be appointed as needed, until such time as the "Private Attorney Panel" was created. Promulgation Order 04-003, *Amendments to the Rules for Appointment of Counsel for Indigent Defendants* (Guam Feb. 27, 2004). The first "Interim Private Attorney Panel" of attorneys was designated by the supreme court on January 18, 2007. Promulgation Order 07-001, *Interim Private Attorney Panel* (Guam Jan. 18, 2007).

On May 3, 2007, Rule 13 was recodified into the Local Rules of the Superior Court of Guam, as Miscellaneous Rule 1.1. Promulgation Order 06-006-01, *Adoption of the Guam Rules of Civil Procedure and Local Rules of the Superior Court of Guam* (Guam May 3, 2007) (attaching as Exh. B the "Local Rules of the Superior Court of Guam"). The court rules require the existence of a "Standing Committee" to receive and review applications from private attorneys who want to serve on the panel, so the standing committee had to be established before the panel could be created. See GUAM SUPER. CT LOCAL R. MR 1.1.3.(b). The first standing committee convened at some point between May 2007 and May 2017. The earliest information made available to the Sixth Amendment Center about the existence and members of the standing committee begins on May 12, 2017.

¹²⁰ GUAM SUPER. CT LOCAL R. MR 1.1.3., 1.1.5 (as amended effective Apr. 1, 2023).

¹²¹ GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(2)(G).

As of September 2023, there were 14 panel attorneys.¹²² The table below shows the number of panel attorneys, in total and for each case type, for fiscal years 2019 through September of fiscal year 2023.¹²³

NUMBER OF ATTORNEYS ON PRIVATE ATTORNEY PANEL OCT. 5, 2018 THROUGH SEPT. 20, 2023							
FISCAL YEAR	DATE OF LIST	TOTAL # OF ATTYS	FELONY # ATTYS	MISDEMEANOR # ATTYS	JUVENILE # ATTYS	GAL # ATTYS	APPELLATE # ATTYS
FY19	October 5, 2018	18	8	8	8	6	8
	October 23, 2018	18	7	7	8	6	8
	November 13, 2018	17	6	6	8	6	8
	April 17, 2019	21	8	9	10	7	8
	May 9, 2019	20	8	8	9	7	8
FY20	March 12, 2020	18	8	8	8	6	7
	April 24, 2020	19	8	8	8	6	8
FY21	August 10, 2021	18	7	7	8	6	8
FY22	March 18, 2022	17	6	6	8	6	8
	March 22, 2022	16	5	5	8	6	8
	April 8, 2022	16	5	5	7	5	8
	April 11, 2022	15	4	4	6	5	8
	May 19, 2022	15	4	4	5	5	8
	August 16, 2022	14	4	4	5	5	7
FY23	October 18, 2022	13	3	4	5	5	6
	December 28, 2022	11	2	3	3	4	6
	January 31, 2023	11	2	3	4	4	6
	April 5, 2023	13	2	3	4	4	8
	April 19, 2023	14	2	4	5	4	8
	September 20, 2023	14	3	3	4	4	8

As the table shows, the number of panel attorneys accepting criminal appointments has decreased over the past four years. Because so few private attorneys are willing to serve as panel attorneys for felony and misdemeanor cases, the supreme court temporarily suspended (from November 17, 2023 through May 17, 2024) appointments to panel attorneys for felony and misdemeanor cases.¹²⁴

¹²² One of these attorneys is now deceased, two of the attorneys have become employees of the primary division, and two of these are organizations rather than individual attorneys (the Guam Legal Services Corporation and the Micronesian Legal Services Corporation). Only the now-deceased attorney accepted appointments in all types of cases; the other 13 attorneys (11 individual attorneys and 2 organizations) accept cases in only one or two categories. GUAM SUPER. CT LOCAL R. MR 1.1, app. B (as of Sept. 20, 2023).

¹²³ During this evaluation, the Sixth Amendment Center was provided the lists of the panel attorneys beginning with October 5, 2018, however it is uncertain whether all changes to the lists were provided and in particular whether there may have been additional changes between April 19 and September 20 of 2023. The most current list is usually available on the judiciary's website (see e.g., <http://www.guamcourts.org/Indigent-Defense/images/2023-10-24-PAP.pdf>), but past lists are not publicly available.

¹²⁴ Promulgation Order 06-006-25, *Amendments to Miscellaneous Rule 1.13. of the Local Rules of the Superior Court of Guam (Indigent Defense Rule)* (Guam Nov. 17, 2023).

PAP standing committee. The court rules require the supreme court to “create a Standing Committee to oversee the Private Attorney Panel.”¹²⁵ The PAP standing committee is made up of five voting members, required to be attorneys who possess “experience and interest in the local criminal justice system.”¹²⁶ The PDSC corporation executive director is a permanent member, and the chief justice appoints four members to two-year terms.¹²⁷ There are also three ex officio, non-voting members: the clerks of the superior and supreme courts, and the chair of the judiciary’s “subcommittee on indigent defense.”¹²⁸

From May 2017 to the present, a total of six private attorneys and the PDSC executive director served on the PAP standing committee while also being panel attorneys who receive court appointments.¹²⁹

Non-panel attorneys. When the PDSC corporation divisions both have a conflict of interest with an indigent person’s case, and there is no panel attorney available to be appointed, the court rules provide that the court can appoint any active member of the Guam Bar Association.¹³⁰

B. Funding of the indigent defense system

All funding for providing the right to counsel of indigent people on Guam comes from one of three sources:

- legislative appropriation;
- fines/fees assessed by the Guam courts on users of the Guam judicial system (collected and deposited into the judicial branch’s “Judicial Client Services Fund”); and
- U.S. federal funds, typically provided in the form of grants.

These funds are used: to compensate all of the attorneys who are appointed to represent indigent people and also the attorneys who provide representational services authorized by statute but for which courts do not appoint counsel; to cover the costs of these attorneys’ overhead to some extent; and to pay for the case-related expenses necessary to the representation of individual appointed clients to the extent that the courts allow.

The following table shows the sources and amounts of all funds expended for Guam’s indigent representation services for fiscal years 2018 through 2022, to the extent that information was available at the time of this report.¹³¹

¹²⁵ GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(1)(A).

¹²⁶ GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(1)(A).

¹²⁷ GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(1)(A), (B), (C).

¹²⁸ GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(1).

¹²⁹ See Letter[s], from Supreme Court of Guam Chief Justice to [individual attorney] (various dates of: May 12, 2017; Feb. 18, 2020; Feb. 17, 2023).

All four of the appointed voting positions on the standing committee were vacant between May 12, 2019, and February 18, 2020 (i.e., the chief justice had not made the necessary appointments).

For the appointments made May 12, 2017, and February 18, 2020, the chief justice appointed all four members to two-year terms, as required by the court rules; for the appointments made February 17, 2023, the chief justice appointed two members to one-year terms and two justices to two-year terms, which differs from the requirements of the court rules. GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(1)(C).

¹³⁰ GUAM SUPER. CT LOCAL R. MR 1.1.3.(a).

¹³¹ The information shown in this table is from the following sources:

SOURCES & AMOUNTS OF ALL EXPENDITURES FOR GUAM INDIGENT REPRESENTATION SERVICES, FISCAL YEARS 2018 THROUGH 2022								
Purpose Of Expenditures	PDSC Corporation, Excluding Alternate Division			Alternate Division		Appointed Private Attorneys	Case-Related Expenses	
Source Of Expenditures	"Other Sources"	U.S. Federal Funds	Legislative Appropriation	Legislative Appropriation	Judicial Client Services Fund	Judicial Client Services Fund	Judicial Client Services Fund	
Fiscal Year								Total ¹
FY 2018	***	\$14,422	\$4,223,344	\$0	\$2,160,171	\$801,463	unknown	\$7,199,399
FY 2019	\$92,551	\$44,752	\$4,142,960	\$0	\$1,470,873	\$903,548	unknown	\$6,654,685
FY 2020	\$0	\$50,420	\$4,459,158	\$0	\$3,125,008	\$767,327	unknown	\$8,401,913
FY 2021	\$0	\$114,665	\$4,743,135	\$1,187,412	\$0	\$886,768	unknown	\$6,931,980
FY 2022	\$0	\$426,150	\$4,805,963	\$1,187,343	\$0	\$779,454	unknown	\$7,198,910

¹ This does not include the unknown amounts expended for case-related expenses.

Legislative appropriations. The Guam legislature appropriates the largest portion of the funding for the right to counsel on Guam. Funds for the right to counsel are appropriated to the PDSC corporation and may be appropriated to the judicial branch's "Judicial Client Services Fund." Appropriated funds unspent at the end of the fiscal year, referred to as "lapsed funds," are retained by the body to which they were appropriated.¹³²

The PDSC corporation receives legislative appropriations from the general fund, and the funds are deposited into the "Public Defender Service Corporation Fund."¹³³ Beginning in fiscal year 2021 and continuing through

for the PDSC corporation:

- expenditures from other sources and from U.S. federal funds are the actual receipts as shown in the PDSC corporation's *Citizen Centric* reports. For FY 2018, the PDSC corporation reported receiving \$1,110,501 from the "Judiciary of Guam," but it is unclear whether this is duplicative of or in addition to the amount shown as having been paid from the Judicial Client Service Fund for the alternate division. Because it could be duplicative, it is excluded here out of caution.
- expenditures from legislative appropriations are the actual expenditures as shown in the budget requests to the legislature.
- for the alternate division:
 - expenditures from legislative appropriations are the actual expenditures as shown in the budget requests to the legislature.
 - expenditures from the Judicial Client Services Fund are from the Guam judiciary's expense ledgers for "Court Appointed Fees / Pro Temp" (one of five line items within the Judicial Client Services Fund). These expenditures reflect the year in which the judiciary made the payment and *not* the year in which the services were provided.
 - for appointed private attorneys:
 - expenditures from the Judicial Client Services Fund are from the Guam judiciary's expense ledgers for "Court Appointed Fees / Pro Temp" (one of five line items within the Judicial Client Services Fund). These expenditures reflect the year in which the judiciary made the payment and *not* the year in which the services were provided.
 - for case-related expenses:
 - there was no source of information available to determine the amounts paid for case-related expenses in appointed cases (i.e., for experts, investigators, and interpreters, as authorized by GUAM SUPER. CT LOCAL R. MR 1.1.4).

¹³² The PDSC corporation was first allowed to retain and carry over its lapsed funds beginning with FY 2000. 12 GUAM CODE ANN. § 11113.1 (2022). See Guam Public Defender Service Corporation Resolution No. PDSC 99-05, *Requesting Legislative Approval for the Carry-over of any Lapsed Funds from Each Fiscal Year Budget to the Following Fiscal Year* (adopted June 29, 1999) (noting: "for previous fiscal years, the Corporation was the only entity within the judiciary branch of our government that was not authorized to carry-over unexpended funds from one fiscal year to the next").

¹³³ 12 GUAM CODE ANN. § 11113 (2022).

the present, the PDSC corporation uses these funds for the PDSC administration as well as the operations of each of its three divisions.

The PDSC corporation and the alternate division each prepare their respective budget requests, and each presents separately to the PDSC board for its approval. The PDSC board has reportedly never declined a budget request. In the view of one board member, that is because 80-90% of the budget request is for personnel “so we don’t have much wiggle room.”

After the PDSC board approves the two budget requests, they are presented to the Guam legislature. The alternate division’s managing attorney is interviewed by the legislature about the budget request for the alternate division, and the PDSC corporation’s executive director is interviewed by the legislature about the PDSC corporation’s budget request for all funding requested *other than* for the alternate division. From fiscal year 2021 and continuing through the present, the PDSC corporation receives one lump sum appropriation from the legislature, but the legislature directs that a specific amount of the appropriated funds can be spent only for the alternate division.

“Judicial Client Services Fund.” Guam statutes established the “Judicial Client Services Fund” within the judicial branch of government under the stewardship of the judicial council.¹³⁴ There are two sources of deposits to this fund:¹³⁵

- any general appropriation authorized by the legislature and designated to be deposited into the fund; and
- “[a]ll increase in fees, fines or revenues . . . collected by the [c]ourts . . . over and above the fees schedule in existence as of September 12, 2002, for the filing of documents, or imposition of fines [except as laws provide for the Guam Law Library and the Criminal Injuries Compensation] . . .”

The judicial council is required to submit a report to the legislature each fiscal year containing “full statements of accounts of all money received and expended out of the account or accounts of the Judicial Client Services Fund.”¹³⁶

One of the statutorily required purposes for the fund is “Appointment of Counsel of Indigent Defendants including, but not limited to, attorney fees, investigator fees, interpreter fees, expert fees, jury fees, and any other related expenses approved by the Superior Court of Guam or the Supreme Court of Guam.”¹³⁷ Court personnel explain that, while most of the expenditures from the Judicial Client Services Fund are for indigent representation in court-appointed cases,¹³⁸ the fund also supports the salaries of judiciary staff providing interpreter services and forensic evaluations in court appointed cases.

¹³⁴ 7 GUAM CODE ANN. §§ 9600, 9602 (2022).

¹³⁵ 7 GUAM CODE ANN. §§ 9601, 9602, 9604 (2022).

¹³⁶ 7 GUAM CODE ANN. § 9603 (2022).

¹³⁷ 7 GUAM CODE ANN. §§ 9600, 9602, 9604 (2022).

¹³⁸ In addition to funding costs of appointed attorneys in adult criminal cases, funds are also provided for appointed attorneys in juvenile delinquency cases, appointed attorneys for parents in juvenile PINS cases, guardian ad litem for minor children in juvenile PINS cases, and appointed attorneys in special proceedings.

The judiciary's budget request documents submitted to the legislature show five types of expenditures made from the Judicial Client Services Fund:

- “contractual services” includes interpreter services for indigent cases (and presumably the fees of authorized experts in indigent cases) and services for an access and visitation site for domestic custody cases;
- “travel/off-island escort;”
- “miscellaneous - CAF /pro temp”¹³⁹ pays the private attorney invoices submitted to and approved by the court (and was used to pay for the operations of the alternate division prior to fiscal year 2021);
- “miscellaneous - interpreters” - it is unclear what interpreter services are paid for from this line item; and
- “miscellaneous - investigator claims.”

U.S. federal funds. A relatively small portion of the funding for the right to counsel on Guam comes from U.S. federal funds, provided to the PDSC corporation in the form of grants. The PDSC corporation holds a separate bank account for each federal grant that it receives, and the funds in each account can only be used for the purposes authorized under the grant. All federal grant funds received by the PDSC corporation today are used to operate its civil division, which is outside the scope of this evaluation.¹⁴⁰ Federal grant funds are currently *not* used to provide representation in adult criminal cases.

¹³⁹ This is the judiciary's general ledger account number 25-01-21-21-G 5293. “CAF” stands for “court appointed fees.”

¹⁴⁰ The civil division today encompasses two subdivisions - the “TAC” or The Advocacy Center; and the “EJC” or Elder Justice Center.

The TAC subdivision of the civil division originated in approximately FY 2011 as a single employee of the PDSC corporation - a “Family Violence Program Specialist” - who provided services to victims and survivors of violence (such as obtaining protective orders and restraining orders) as part of a U.S. federal grant known as the “Stop Violence Against Women Program.” The PDSC corporation was a sub-grantee under the federal grant that was administered by the office of the governor. Until early 2023, the PDSC corporation referred to this as the “domestic violence program.” See Guam Public Defender Service Corporation Resolution No. PDSC 01-11, *Advancement of Public Defender Service Corporation's Operations Fund to the Domestic Violence Program to Cover Program Expenses Pending the Release of Federal Funds* (adopted Feb. 23, 2011); Guam Public Defender Service Corporation Resolution No. PDSC 06-12, *Funding Advance for the Domestic Violence Program* (adopted Dec. 20, 2011); Guam Public Defender Service Corporation Resolution No. PDSC 16-16, *Funding Advance for the Domestic Violence Program* (adopted Apr. 26, 2016); Guam Public Defender Service Corporation Resolution No. PDSC 12-17, *Use of Lapsed Funds for Funding of the Domestic Violence* (adopted Aug. 22, 2017) (noting: for FY 2017 the PDSC corporation will have to fund 50% of the personnel cost for the Family Violence Program (FVP) Specialist).

The EJC subdivision of the civil division began in July 2020 as a six-month pilot project by the PDSC corporation to provide civil legal services (such as preparing wills or powers of attorney) as a sub-grantee under a pre-existing program operated by the Guam Department of Public Health and Social Services and funded in part by a U.S. federal grant and in part through funds from the Guam government. Today, the grant funding pays for one attorney and a project coordinator, along with a small number of supplies and equipment. Guam Public Defender Service Corporation Resolution No. PDSC 06-20, *The Creation of the Elder Justice Center Pilot Program* (adopted July 28, 2020); Guam Public Defender Service Corporation Resolution No. PDSC 01-22, *Establishing the Elder Justice Center as a Permanent Division* (adopted Oct. 26, 2021); Guam Public Defender Service Corporation Resolution No. PDSC 01-23, *Establishing the Elder Justice Center as a Permanent Division* (adopted Oct. 25, 2022).

The PDSC corporation received approximately \$1.5 million passed through by the Guam government from the American Rescue Plan Act federal funding provided as a result of the covid-19 pandemic. The PDSC corporation used this funding to pay for some overhead expenses of the civil division, including rent, a case management system, and the internet.

CHAPTER V

Process of a Criminal Case

In 2008, the United States Supreme Court reaffirmed in *Rothgery v. Gillespie County* that the right to counsel attaches when “formal judicial proceedings have begun.”¹⁴¹ For a person who is arrested, the beginning of formal judicial proceedings is at “a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction,”¹⁴² without regard to whether a prosecutor is aware of the arrest.¹⁴³ For all defendants (both those who are arrested and those who are not), the commencement of prosecution, “whether by way of formal charge, preliminary hearing, indictment, information, or arraignment,” signals the beginning of formal judicial proceedings.¹⁴⁴

In accordance with these requirements, Guam guarantees by statute that: “In any criminal action, the defendant is entitled . . . [t]o defend in person and with counsel. Every defendant accused of a crime who is financially unable to employ counsel shall be entitled to have counsel assigned at public expense to represent him at every stage of the proceedings from his initial appearance before the court through appeal, unless he waives such appointment.”¹⁴⁵

The Court in *Rothgery* carefully explained, however, that the question of whether the right to counsel has attached is distinct from the question of whether a particular proceeding is a “critical stage” at which counsel must be present as a participant. “Once attachment occurs, the accused at least is entitled to the presence of appointed counsel during any ‘critical stage’ of the postattachment proceedings . . .”¹⁴⁶ In other words, according to the Court, the Constitution does not necessarily require that defense counsel be present at the moment the right to counsel attaches, but from that moment forward, no critical stage in a criminal or juvenile delinquency case can occur unless the defendant is represented by counsel or has made an informed and intelligent waiver of counsel. Arraignments,¹⁴⁷ plea negotiations,¹⁴⁸ and sentencing hearings,¹⁴⁹ for example, are all critical stages of a case. If an indigent defendant is actually deprived of counsel at a

141 *Rothgery v. Gillespie County*, 554 U.S. 191, 211 (2008). See also *Michigan v. Jackson*, 475 U.S. 625, 629 n.3 (1986); *Brewer v. Williams*, 430 U.S. 387, 388-89 (1977).

142 *Rothgery v. Gillespie County*, 554 U.S. 191, 213 (2008).

143 *Rothgery v. Gillespie County*, 554 U.S. 191, 194 (2008).

144 *Brewer v. Williams*, 430 U.S. 387, 398 (1977) (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972)). See also *Michigan v. Jackson*, 475 U.S. 625, 629 n.3 (1986).

145 8 GUAM CODE ANN. § 1.11 (2022). For the definition of and laws applicable to a “criminal action,” see 7 GUAM CODE ANN. §§ 1106, 1112 (2022); 8 GUAM CODE ANN. § 5.45 (2022).

146 *Rothgery v. Gillespie County*, 554 U.S. 191, 212 (2008).

147 *Hamilton v. Alabama*, 368 U.S. 52, 53-55 (1961).

148 *Lafler v. Cooper*, 132 S. Ct. 1376, 1386 (2012); *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010); *McMann v. Richardson*, 397 U.S. 759, 771, 771 n.14 (1970).

149 *Lafler v. Cooper*, 132 S. Ct. 1376, 1386 (2012); *Wiggins v. Smith*, 539 U.S. 510, 538 (2003); *Glover v. United States*, 531 U.S. 198, 203-04 (2001); *Mempa v. Rhay*, 389 U.S. 128, 134, 137 (1967).

critical stage, the U.S. Supreme Court says that is unfair and so likely to prejudice the accused that “no amount of showing of want of prejudice would cure it.”¹⁵⁰

This chapter details the process of a client’s criminal case, focusing on the early stages that occur from arrest through arraignment.

A. Arrest

A person can be arrested on Guam for any felony or misdemeanor, with or without a warrant.¹⁵¹ Law enforcement officers report that most criminal cases on Guam begin with the warrantless arrest of a suspect at the scene of a crime.

When a person is arrested, with or without a warrant, the officer making the arrest must take the person before a judge “without unnecessary delay” and always within 48 hours after the arrest.¹⁵² However, there are a few circumstances in which an officer may release an arrested person instead of taking the person before a judge within 48 hours.

Release with no further proceedings – “station house release.” The officer may release the defendant if the defendant is arrested without a warrant *and*: the officer is satisfied that there are insufficient ground for requesting a criminal complaint against the person; *or* the person was arrested for “intoxication only, and no further proceedings are desirable;” *or* the person was arrested “only for being under the influence of a narcotic drug, or restricted dangerous drug” and is “delivered to a facility or hospital for treatment and no further proceedings are desirable.”¹⁵³ This is referred to on Guam as “station house release,” and according to law enforcement officers it is “sparingly used” and most often occurs when the attorney general’s office tells police to let someone go. Typically, nothing further will happen in the criminal proceeding, although the police report is sent to the attorney general’s office.

Release with written notice to appear – “booked and released.” If the defendant was arrested on a warrant and the court that issued the warrant set conditions for the defendant’s release, an officer may “accept and approve any bond or deposit required by the warrant” and release the defendant subject to the conditions of the warrant.¹⁵⁴

If the defendant was arrested without a warrant and “does not demand to be taken before a judge,” the officer may release the defendant (except for certain felony offenses).¹⁵⁵ Guam law enforcement officers historically had almost total discretion about whether to release or detain a person who was arrested

150 United States v. Cronin, 466 U.S. 648, 658-59 (1984) (quoting Davis v. Alaska, 415 U.S. 308, 318 (1974)).

151 8 GUAM CODE ANN. § 20.15 (2022).

152 8 GUAM CODE ANN. § 45.10 (2022). If an arrestee is not taken before a judge within 48 hours, the government bears the burden of demonstrating that “a bona fide emergency or an extraordinary circumstance existed.” 8 GUAM CODE ANN. § 45.10 (2022).

153 8 GUAM CODE ANN. § 20.60 (2022).

154 8 GUAM CODE ANN. § 15.50 (2022).

155 8 GUAM CODE ANN. §§ 20.60, 25.10 (2022).

without a warrant. Prior to January 2023, all people arrested without a warrant on a misdemeanor charge were released as a matter of policy, because Guam's detention facilities are overpopulated and because of pandemic-related dangers of detention. Since January 2023, law enforcement contacts the attorney general's office to determine whether to release or detain the person in all cases (both misdemeanor and felony), and the attorney general's policy has been to request cash bail or detention in all cases.

Both of these situations are referred to on Guam as “booked and released.” A defendant who is booked and released must sign a written notice to appear in court on the date and time contained in the notice, which must be at least five days after the arrest.¹⁵⁶ The date on which the person is required to appear in court will be their arraignment, sometimes referred to locally as “first appearance.”¹⁵⁷

A person who is booked and released on a misdemeanor is typically ordered to appear for their arraignment approximately 364 days after their arrest, while a person who is booked and released on a felony is typically ordered to appear just shy of three years after arrest. The reason that these arraignment dates are set so far into the future after arrest is because the attorney general has one year following commission of a misdemeanor and at least three years following commission of a felony to commence the prosecution upon which the defendant will be arraigned.¹⁵⁸

Not released – “booked and confined.” If not otherwise released (referred to locally as “booked and confined”), a person who is arrested must be taken before a judge “without unnecessary delay” and always within 48 hours after the arrest.¹⁵⁹ The date on which the person is taken before a judge is referred to locally as their “magistrate hearing.”

B. Proceedings before a judicial officer

The next step, after a person is either “booked and confined” or “booked and released,” is for the defendant to appear in court before a judicial officer. The Guam courts have assigned magistrates (rather than judges) to preside over all of these initial appearances by defendants in criminal cases.¹⁶⁰

The initial appearance by an in-custody defendant (a person who was “booked and confined”) must be held within 48 hours after the arrest,¹⁶¹ and the proceeding is referred to locally as a “magistrate hearing.” The

¹⁵⁶ 8 GUAM CODE ANN. § 25.20 (2022). A person who is released by law enforcement prior to appearing before a judge is not subject to any conditions of release nor are they required to post bail of any sort. If the person fails to appear as ordered in the notice to appear that they signed at the time of their release from custody, a bench warrant for their arrest can be issued, although stakeholders report that a bench warrant is usually not issued until after a defendant's second failure to appear.

¹⁵⁷ Occasionally, prosecution is initiated against a defendant (either by grand jury indictment or by a complaint) after they are released but before the date they are required to appear in court according to their signed notice to appear. When this occurs, the defendant is supposed to be personally served with a summons to appear in court.

¹⁵⁸ 8 GUAM CODE ANN. §§ 10.20, 10.30, 10.70 (2022).

¹⁵⁹ 8 GUAM CODE ANN. § 45.10 (2022).

¹⁶⁰ GUAM S.C.T. ADMIN. R. 20-001, Exh. A, p. 7.

¹⁶¹ 8 GUAM CODE ANN. § 45.10 (2022). If an arrestee is not taken before a judge within 48 hours, the government bears the burden of demonstrating that “a bona fide emergency or an extraordinary circumstance existed.” 8 GUAM CODE ANN. § 45.10 (2022).

Magistrate hearings occur at 3:00 p.m. six days per week, Monday through Saturday, except when a holiday falls on Monday

initial appearance by an out-of-custody defendant (a person who was “booked and released”) is likely to be approximately 364 days after their arrest for a misdemeanor or just shy of three years after their arrest for a felony, and the proceeding is the arraignment which is sometimes referred to locally as a “first appearance.” During the time between an indigent defendant’s arrest and their initial appearance, they are rarely ever represented by an attorney.¹⁶²

Whether a defendant is in- or out-of-custody, this initial appearance before a judicial officer is the proceeding on Guam that triggers the attachment of the right to counsel under *Rothgery v. Gillespie County*.¹⁶³ From that moment forward, every indigent defendant has the right to be effectively represented by appointed counsel during every critical stage of their case, unless they make an informed and intelligent waiver of their right to counsel.

1. Magistrate hearing

Participants in magistrate hearings are the magistrate (and other court staff),¹⁶⁴ a probation officer, interpreters, a prosecutor,¹⁶⁵ a primary division attorney,¹⁶⁶ an alternate division attorney,¹⁶⁷ and the defendant.¹⁶⁸ Prior to 2016, indigent defense system attorneys were not present at magistrate hearings.

For each defendant who is scheduled to appear at a magistrate hearing, the attorney general’s office must file a complaint, referred to locally as the “magistrate’s complaint.” Along with the magistrate’s complaint, the attorney general’s office also files an affidavit or declaration of probable cause.

A probation officer meets with each defendant who is scheduled for court that day and attempts to interview them, although the defendant is allowed to decline the interview. There are no attorneys present during these interviews. If the defendant consents to the interview, the probation officer obtains

then the weekend session is held on Sunday rather than Saturday. The court rules allow the magistrate hearing to be conducted in person, with all of the participants physically present in the courtroom, or through the use of video technology, with various of the participants physically present at different locations. GUAM SUPER. CT LOCAL R. MR 3.1. Primarily as an outcome of the pandemic, all magistrate hearings are now conducted by video conference.

¹⁶² Any person who has received a notice to appear can walk in to the primary division office or the alternate division office to apply for an appointed attorney right away, and if they meet the eligibility requirements the division will assign an attorney to represent them right away rather than waiting until after the arraignment to do so, however this occurs only very rarely and there is no formal mechanism to advise people who have been arrested and released that this possibility exists.

¹⁶³ *Rothgery v. Gillespie County*, 554 U.S. 191, 211 (2008). See also *Michigan v. Jackson*, 475 U.S. 625, 629 n.3 (1986); *Brewer v. Williams*, 430 U.S. 387, 388-89 (1977).

¹⁶⁴ The two superior court magistrates alternate monthly in presiding over magistrate hearings. One of the magistrates participates by video from his chambers, while his court staff are physically present in the courtroom. The other magistrate is physically present in the courtroom along with his court staff.

¹⁶⁵ Prior to 2023, a prosecutor was physically present in the courtroom, but beginning in 2023 the prosecutor usually participates by video from the attorney general’s office. The prosecutor is allowed to be physically present in the courtroom if they prefer to do so.

¹⁶⁶ The primary division attorneys take turns staffing the magistrate hearing dockets, with one attorney responsible for appearing at each docket. The primary division attorney participates by video, usually from the primary division office, although they are allowed to be physically present in the courtroom if they prefer to do so.

¹⁶⁷ The one part-time alternate division attorney handles all magistrate hearings and participates by video, usually from the alternate division office, although they are allowed to be physically present in the courtroom if they prefer to do so.

¹⁶⁸ Defendants appear by video from the department of corrections.

the defendant's contact information and length of residence, other information to add to a risk assessment, and the defendant's financial information. Regardless of whether the defendant is interviewed, the probation officer gathers the defendant's local record and NCIC record. The probation officer assembles all of this information into the "magistrate summary report," for the use of the magistrate during the hearing.

The primary division attorney assigned to that day's magistrate hearing docket receives, throughout the day prior to the hearings beginning, documents related to each defendant, including the magistrate's complaint, the affidavit of probable cause, the defendant's financial declaration if one was prepared, and the magistrate summary report compiled by the probation officer. The indigent defense system attorneys do not typically speak to the defendants prior to the hearings – there is no opportunity to do so – so whatever representation they provide to any defendant at the magistrate hearing is generally based solely on the paperwork they receive from the prosecutor and probation officer.¹⁶⁹

At the magistrate hearing, the magistrate determines whether the defendant needs an interpreter¹⁷⁰ and, for a warrantless arrest, determines whether there was probable cause for the arrest.¹⁷¹ For a person arrested without a warrant, in *County of Riverside v. McLaughlin*,¹⁷² the United States Supreme Court held that a judge must make a probable cause determination within 48 clock hours of a warrantless arrest, or the government risks being held responsible for an illegal detention. It is not necessary for there to be an actual hearing, and a judge can make this determination without ever seeing the defendant. Instead, the court can review the paperwork signed under oath by the officer.

Guam law accordingly requires that a court make a probable cause determination at or before an in-custody defendant's magistrate hearing following a warrantless arrest, which must occur within 48 hours, but the

Proceedings by video conference

The superior court may use video conferencing technology to conduct magistrate hearings, first appearances, arraignments, bail determination hearings, pretrial conferences, criminal trial settings, and other pretrial motion hearings. The technology used must allow all participants to "see, hear and communicate with each other simultaneously" and to "see, hear and otherwise observe any physical evidence or exhibits."

"Each location must provide parties with a means of communicating fully and confidentially with counsel." During magistrate hearings conducted by video conferencing, "if the detainee has retained counsel who wishes to be present during the hearing, counsel has the option of appearing in either the courtroom or at DOC."

All magistrate hearings are conducted by video conference, and at least some of the participants in arraignments appear by video conference. All other hearings are presided over by the superior court judges, and each judge makes their own decision about whether the participants must appear in person or can participate by video or phone, but there is a trend toward more in-person appearances. For trials, all participants always appear in person.

¹⁶⁹ The indigent defense system attorneys also use the documents received prior to the magistrate hearing to determine whether their respective divisions have a conflict of interest with representing the defendant in their case.

¹⁷⁰ GUAM S.Ct. ADMIN. R. 13-004, Attach I - "Registered Court Interpreter Program for Indigent Criminal Defense".

¹⁷¹ 8 GUAM CODE ANN. § 45.20 (2022).

¹⁷² 500 U.S. 44 (1991).

defendant does not have to be present during the probable cause determination.¹⁷³ If 48 hours pass without a detained person being brought before the court, the person will be released from custody. To determine whether there was probable cause for the warrantless arrest, the magistrate reviews the declaration or affidavit of probable cause that is filed by the prosecutor along with the complaint. If the magistrate finds that there was not probable cause for the arrest, the case is dismissed and the defendant is released from jail; if the magistrate finds that there was probable cause for the arrest, the case continues against the defendant.

Next, the magistrate:¹⁷⁴

- informs the defendant of the charge(s) against them, as contained in the complaint and any supporting affidavit (or the indictment in a felony case if one has already been filed at the time of the magistrate hearing), and ensures that the defendant has received a copy;
- informs the defendant of their right to retain counsel and to request appointment of counsel if they are unable to secure their own attorney, then if the defendant does not have an attorney, the magistrate determines whether the defendant meets the eligibility criteria and appoints counsel for any defendant found to be eligible;
- determines whether and under what conditions the defendant can be released from custody pending disposition of the charge(s) against them;
- informs the defendant that they are not required to make a statement, while any statement they make may be used against them; and
- in felony cases, informs the defendant of their rights to indictment and to preliminary examination.

The defendant is not asked to enter a plea at the magistrate hearing.¹⁷⁵ Defendants are never asked to speak with a prosecutor before an attorney is appointed, and pleas are rarely discussed and never taken at a magistrate hearing.

a. The right to counsel

Although both a primary division attorney and an alternate division attorney are present at all magistrate hearings, those attorneys have not yet been appointed to represent any defendant scheduled for a hearing. Instead, their role at the magistrate hearing is primarily: to aid the court in determining whether a defendant meets the financial eligibility guidelines to receive appointed counsel; to advise the court whether their office has a known conflict of interest in representing an eligible defendant in the case against them; and for any defendant who appears at their magistrate hearing without an attorney (without regard to the defendant's financial status), to represent that defendant *only during the magistrate hearing* for purposes of the pretrial release determination.

The magistrate informs each defendant, directly and individually, of their right to counsel and to have counsel appointed at no cost to them if they meet the financial eligibility standards. A defendant who is

¹⁷³ 8 GUAM CODE ANN. § 45.20 (2022).

¹⁷⁴ 8 GUAM CODE ANN. § 45.30 (2022).

¹⁷⁵ 8 GUAM CODE ANN. § 45.30 (2022).

accused of an offense for which incarceration is a possible punishment has three choices about the right to counsel. The defendant can: have or intend to obtain their own private attorney; request that counsel be appointed to represent them; or waive their right to counsel altogether and choose to self-represent.¹⁷⁶

Waiver of the right to counsel. A defendant has a Sixth Amendment right to waive counsel and self-represent, but a judge must determine that the defendant's choice to waive the right to counsel and represent themselves is made knowingly, voluntarily, and intelligently.¹⁷⁷ There is no entity on Guam that is responsible for knowing how many defendants in criminal cases waive their right to counsel and whether those defendants are indigent.¹⁷⁸

Requesting appointed counsel & indigency determination. If a defendant appears in a criminal proceeding without an attorney, the court must ask if the defendant “desires the assistance of counsel.”¹⁷⁹ At magistrate hearings, the magistrates do not require an unrepresented defendant to affirmatively request appointed counsel; rather, for any defendant who appears without an attorney, the magistrate determines whether the defendant meets the financial eligibility guidelines that allow them to receive an appointed attorney.

The court rules require that a defendant who wants an appointed attorney must complete and sign under penalty of perjury a written “Financial Declaration.”¹⁸⁰ For most defendants, a probation officer has prepared this document and provided it to the magistrate in advance of the hearing. Without regard to whether a financial declaration has been completed by a defendant, the magistrate questions the defendant about their income and household size.

The court applies financial eligibility guidelines established by the PDSC board to the defendant’s financial information (whether provided in a financial declaration, or orally, or both) to determine whether the defendant has the financial ability to secure their own attorney.¹⁸¹ The financial eligibility guidelines established by the PDSC board were most recently amended on October 24, 2023, and they are:¹⁸²

PERSONS IN FAMILY/ HOUSEHOLD	100%	200%	
	ANNUAL	ANNUAL	HOURLY
1	\$16,770	\$33,540	\$16.13
2	\$22,680	\$45,360	\$21.81
3	\$28,590	\$57,180	\$27.49
4	\$34,500	\$69,000	\$33.17
5	\$40,410	\$80,820	\$38.86
6	\$46,320	\$92,640	\$44.54
7	\$52,230	\$104,460	\$50.22
8	\$58,140	\$116,280	\$55.90
For families /households with more than 8 persons, add \$11,820 for each additional person.			Annual Wage / 2080 hours

¹⁷⁶ Faretta v. California, 422 U.S. 802 (1975).

¹⁷⁷ Faretta v. California, 422 U.S. 802 (1975).

¹⁷⁸ Anecdotal, justice system stakeholders report that it is extremely rare for a defendant to waive their right to counsel; so rare that one judicial officer could only recall a single defendant having waived their right to counsel over the past seven years.

¹⁷⁹ 8 GUAM CODE ANN. § 45.30(b) (2022).

¹⁸⁰ GUAM SUPER. CT LOCAL R. MR 1.1.2. and app. A.

¹⁸¹ GUAM SUPER. CT LOCAL R. MR 1.1.2.

¹⁸² Guam Public Defender Service Corporation Resolution No. PDSC 02-24 (adopted Oct. 24, 2023). See Board Meeting Packet, Guam Public Defender Service Corporation Board of Trustees' Regular Scheduled Meeting (Oct. 24, 2023). The amendment to the eligibility guidelines was approved October 3, 2023, subject to receiving additional input from members of the Guam bar. Minutes, Guam Public Defender Service Corporation Board of Trustees' Regular Scheduled Meeting (Oct. 3, 2023).

If a defendant's income, given their household size, is less than the amount shown in the chart above as 200% annual (or the equivalent hourly rate), then the court is statutorily required to appoint an attorney at no cost to the defendant upon the defendant's request.¹⁸³

Even with the fairly straight-forward criteria for eligibility, there is occasionally disagreement among judicial officers and indigent defense system attorneys about whether a defendant is eligible for an appointed attorney.¹⁸⁴ For example, some believe that the term “household” means only the defendant and their dependents who live with them, others believe that it includes the defendant and dependents whom they are legally obligated to support, and still others believe that it includes all individuals living in the same home as the defendant (for example including elderly parents, grandparents, aunts and uncles, cousins, etc.).

There is no mechanism in Guam's statutes or court rules for a defendant to appeal from a court's decision that they are not financially eligible to receive appointed counsel; however, each time that a defendant appears in a criminal proceeding without a lawyer, the presiding judicial officer must again ask if the defendant wants an appointed attorney and determine their eligibility to receive one,¹⁸⁵ and if a defendant's financial status changes at any stage of the proceedings then the court can appoint or withdraw counsel accordingly.¹⁸⁶

Appointment of counsel. For all defendants who want an appointed attorney and whom the magistrate has found financially eligible to receive one, the magistrate appoints either the primary division or the alternate division or a private attorney.¹⁸⁷ In most circumstances, the defendant leaves their magistrate hearing not knowing the identity of the specific attorney who will represent them, and most often no specific individual attorney has yet been assigned to their case. The process of assigning a specific attorney to represent a specific defendant takes time, during which the indigent defendant is not actively represented by any attorney.

183 8 GUAM CODE ANN. § 45.30(b) (2022) (“The court shall assign counsel at public expense if the defendant desires counsel and is financially unable to employ counsel.”).

184 Under the guidelines that were in effect prior to October 24, 2023, the value of household assets was also considered in determining eligibility, giving rise to frequent disagreements between magistrates and indigent defense system attorneys about whether a defendant met the criteria. Guam Public Defender Service Corporation Resolution No. PDSC 04-14, *Adoption and Approval of the Updated PDSC Eligibility Guidelines* (adopted Jan. 14, 2014). Under these earlier guidelines, the primary division attorneys would sometimes move to withdraw from representing a defendant to whom they had been appointed, on the basis of having learned that the defendant appeared to have assets (such as a savings account or an interest in real estate) that had not been considered at the time of the original eligibility determination. The newly amended guidelines appear to eliminate consideration of assets, which should reduce the grounds for denial of appointed counsel.

185 8 GUAM CODE ANN. § 45.30(b) (2022).

186 GUAM SUPER. CT LOCAL R. MR 1.1.2.(c).

187 Prior to November 17, 2023, the courts were required to appoint counsel in the following order: “(1) The Public Defender Service Corporation; (2) The Alternate Public Defender Office; (3) The Private Attorney Panel; and (4) Active members of the Guam Bar Association.” GUAM SUPER. CT LOCAL R. MR 1.1.3(a) (prior to amendment of Nov. 17, 2023). Because so few attorneys have been willing to serve as panel attorneys for felony and misdemeanor cases, on November 17, 2023, the supreme court temporarily suspended (from November 17, 2023, through May 17, 2024) the making of appointments to panel attorneys for felony and misdemeanor cases. Promulgation Order 06-006-25, *Amendments to Miscellaneous Rule 1.1.3 of the Local Rules of the Superior Court of Guam (Indigent Defense Rule)* (Guam Nov. 17, 2023).

Each and every defendant has a right to effective representation that is free from conflicts of interest.¹⁸⁸ As the United States Supreme Court stated in *Glasser v. United States*: “‘assistance of counsel’ guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.”¹⁸⁹

As recognized by the *Guam Rules of Professional Conduct*, a conflict of interest can arise in basically three ways:¹⁹⁰

- when a lawyer represents, at the same time, two clients who have conflicting interests;
- when a lawyer’s current client has interests that conflict with those of the lawyer’s former client or a third person with whom the lawyer has a relationship; and
- when the lawyer’s own personal interests conflict with those of the lawyer’s client.

Generally, unless a client gives “informed consent, confirmed in writing,” a lawyer cannot represent a client if the lawyer has a conflict of interest.¹⁹¹ Under the *Guam Rules of Professional Conduct*, in most instances, if one lawyer in a law firm is disqualified from representing a client due to a conflict of interest, then all of the lawyers in that same law firm are also disqualified from representing that client.¹⁹²

When the magistrate is aware at the time of a magistrate hearing that two or more eligible defendants are being prosecuted for a single course of conduct (co-defendants), then the magistrate appoints the primary division to represent the first co-defendant, the alternate division to represent the second co-defendant, and different private attorneys to represent each additional co-defendant. While conflicts of interest in a multi-defendant case are fairly easily seen at the time of a defendant’s magistrate hearing, in a single-defendant case an attorney may not realize that other types of conflicts of interest exist until they learn more about the facts of the case through discovery and investigation.

Primary division. The primary division is required by statute to accept every appointment made by a judicial officer in every case of a financially eligible defendant unless the primary division has a conflict of interest.¹⁹³

In 2014, the PDSC board adopted standard operating procedures to guide all of the divisions of the PDSC corporation in determining when they must decline an appointed case because of a conflict of interest. The PDSC board’s conflict of interest policy prohibits a division of the PDSC corporation from representing an appointed defendant when: (1) the defendant newly appointed to the division is a victim or witness in another case currently being handled by the same division; (2) a victim, witness, or co-defendant in the case of the defendant newly appointed to the division is currently a client of the appointed division in another

188 See, e.g., *Wood v. Georgia*, 450 U.S. 261, 271 (1981) (“Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest.”); *Cuyler v. Sullivan*, 446 US 335, 346 (1980) (“Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial.”); *Glasser v. United States*, 315 U.S. 60, 70 (1942).

189 *Glasser v. United States*, 315 U.S. 60, 70 (1942).

190 GUAM R. PROF’L CONDUCT r. 1.7, 1.9.

191 GUAM R. PROF’L CONDUCT r. 1.7, 1.9.

192 GUAM R. PROF’L CONDUCT r. 1.10.

193 12 GUAM CODE ANN. § 11104 (2022).

case; or (3) an employee of the appointed division is a victim or witness in the case of the defendant newly appointed to the division.¹⁹⁴

If neither the magistrate nor the participating indigent defense system attorneys are aware of any conflict of interest with the primary division, then the magistrate will appoint the primary division (but the defendant does not know which primary division attorney will defend them and no specific attorney has been assigned at that point). If the primary division is aware at the time of the magistrate hearing that it has a conflict of interest, then the magistrate will appoint the alternate division or a private attorney.

Alternate division. In any case in which the primary division has a conflict of interest, the alternate division accepts the appointment unless the alternate division has a conflict of interest. If neither the magistrate nor the participating indigent defense system attorneys are aware of any conflict of interest with the alternate division, then the magistrate will appoint the alternate division (but the defendant does not know which alternate division attorney will defend them and no specific attorney has been assigned at that point, though it will definitely not be the alternate division attorney who is participating in the defendant's magistrate hearing). If the alternate division is aware at the time of the magistrate hearing that it has a conflict of interest, then the magistrate will appoint a private attorney.

Appointed private attorneys. Prior to November 2023, in any case in which both the primary division and the alternate division had a conflict of interest, the magistrate would rotate alphabetically through the panel attorneys on the appropriate list (felony or misdemeanor) and each of those attorneys was required to accept the appointment unless they had a conflict of interest (or was otherwise unavailable "due to scheduling conflicts, workload, or other good cause"), in which circumstance the magistrate would appoint the next panel attorney unless and until all panel attorneys were determined to be unavailable.¹⁹⁵

If no panel attorney is available (and from November 2023 through at least May 2024 in all criminal cases without regard to whether a panel attorney is available), the magistrate appoints, rotating alphabetically, the next non-panel attorney "from a membership list as approved by the Supreme Court."¹⁹⁶ All of the court clerks have access to the spreadsheet of non-panel attorneys who are eligible to be involuntarily appointed. Whenever a judicial officer makes a new appointment or allows an appointed attorney to withdraw, the chamber clerk for that judicial officer emails the clerk of court and the chief deputy clerk, and the spreadsheet is immediately updated. Some judicial officers say there is an unwritten internal agreement among the judicial officers of the superior court to only appoint non-panel attorneys in felony cases who have been licensed to practice law for more than seven years, while others say there is no such agreement.

194 Guam Public Defender Service Corporation Resolution No. PDSC 03-14, *Approval of the Public Defender Service Corporation's Standard Operating Procedures (SOP) for Conflicts of Interest* (adopted Jan. 4, 2014) (attaching as Attachment "A" the Standard Operating Procedures for "Conflicts of Interest (Withdrawals from Cases due to Conflicts)").

195 GUAM SUPER. CT LOCAL R. MR 1.1.3(b) (4)(A). Despite the plain language of the court rule, many indigent defense system attorneys believe that panel attorneys cannot refuse or "pass" cases on the basis of a scheduling conflict or an excessive number of cases.

196 GUAM SUPER. CT LOCAL R. MR 1.1.3(a) (as amended Nov. 17, 2023); Promulgation Order 06-006-25, *Amendments to Miscellaneous Rule 1.1.3. of the Local Rules of the Superior Court of Guam (Indigent Defense Rule)* (Guam Nov. 17, 2023).

When the magistrate appoints a private attorney (either a panel attorney or a non-panel attorney), the magistrate states the name of the attorney who is being appointed, but the defendant is not provided contact information for the appointed attorney, and the attorney is not at that point aware that the appointment has been made¹⁹⁷ nor have they had an opportunity to determine whether they have a conflict of interest in accepting the case.

b. Pre-trial release or detention

Next, the magistrate determines whether and under what circumstances the defendant can be released from custody pending disposition of the charge(s) against them.¹⁹⁸ The magistrate first asks the prosecution for their bail request (whether they are seeking to confine or release the defendant), then asks probation about the defendant's prior history and risk assessment, and finally asks the defense attorney for their request and argument. Since January 2023, the attorney general's office reportedly seeks continued pretrial confinement for all in-custody defendants, without regard to the details of the case or the defendant.

If a private attorney (panel or non-panel) was appointed to represent the defendant, that defendant's pretrial release determination will most likely be continued to the next scheduled magistrate hearing docket, so that the appointed private attorney can be present to represent the defendant. Some justice system stakeholders question the wisdom of requiring a defendant to sit in jail for additional time awaiting their attorney, rather than allowing the judicial officer to rule on the defendant's release.¹⁹⁹

If the primary division or the alternate division was appointed to represent the defendant, then the attorney from the relevant division who is present for that day's magistrate hearing docket will represent the defendant *solely for the pre-trial release decision*.²⁰⁰ The indigent defense system attorneys typically ask for a personal release bond for every defendant.²⁰¹ As discussed above, the indigent defense system attorneys do not usually speak to the defendants prior to the magistrate hearing (nor do they have confidential conversations with defendants during the hearing). This means that the advocacy they can provide about pretrial release for any defendant is almost entirely limited to making arguments based on the information contained in the charging documents prepared by the prosecutor and the magistrate's summary report prepared by the probation officer. Some justice system stakeholders question whether any attorney can provide meaningful representation under these circumstances.

¹⁹⁷ There are only rarely any private attorneys present (physically or virtually) during magistrate hearings.

¹⁹⁸ 8 GUAM CODE ANN. § 45.30 (2022).

¹⁹⁹ The U.S. Supreme Court reaffirmed in *Rothgery v. Gillespie County* that the right to counsel attaches when "formal judicial proceedings have begun," but that this is distinct from whether that proceeding is a "critical stage" at which counsel must be present as a participant. *Rothgery v. Gillespie County*, 554 U.S. 191, 211-12 (2008). The U.S. Supreme Court has not addressed whether the decision to release or detain a defendant pre-trial is a critical stage in a criminal case. This is a developing area of the law.

²⁰⁰ The indigent defense system attorneys who are present for the day's magistrate hearing docket also represent, *solely during the magistrate hearing and for the limited purpose of the pre-trial release determination*, every non-indigent defendant who appears at their magistrate hearing without an attorney. This type of appearance by the indigent defense system attorneys is referred to locally as a "limited entry."

²⁰¹ A personal release bond means that the defendant is released from confinement without posting any cash bail, but if the defendant fails to appear in court as ordered then they will be required to pay a set amount of money.

c. Next steps

At the conclusion of the magistrate hearing, the case is allotted to a courtroom (and by that allotment, to a specific superior court trial judge).²⁰²

The next in-court proceeding following the magistrate hearing is either preliminary examination (only available for a felony pre-indictment) or arraignment, neither of which can occur unless an attorney represents the eligible defendant and actively participates in the proceedings.

2. Preliminary examination (felonies only, pre-indictment)

At the magistrate hearing for a felony defendant, the magistrate schedules a preliminary examination, unless the defendant waives the right to have one.²⁰³ The preliminary examination is statutorily required to be held within 10 days of the magistrate hearing for a defendant who remains in custody and within 20 days for a defendant who was released from custody.²⁰⁴

The purpose of the preliminary hearing is for the magistrate to determine whether there is probable cause to believe that the alleged offense has been committed and that it was committed by the defendant, and both the prosecutor and the defense attorney can examine witnesses and introduce evidence at the hearing.²⁰⁵ If the magistrate finds no probable cause, the defendant is discharged (although the prosecutor may still seek an indictment from a grand jury); if the magistrate finds probable cause, the magistrate enters an order holding the defendant to answer to the charge (which will happen at arraignment) and the prosecutor is required to file an information in the superior court within 15 days.²⁰⁶

However, according to justice system stakeholders, as a practical matter, preliminary examinations never take place on Guam. This is because the preliminary examination will not be held if an indictment has been returned,²⁰⁷ and in practice the prosecutors *always* obtain an indictment before a preliminary examination can be held. Not a single primary division attorney could recall a preliminary examination ever having occurred. When an indictment is returned, a marshal serves the defendant with a copy of the indictment and a summons to appear in court for arraignment.

3. Arraignment

Arraignment is a critical stage in a criminal case, during which the indigent defendant has the right to counsel and for their appointed attorney to be present as an active participant in the proceedings.²⁰⁸ Plea

202 See GUAM S.CT. ADMIN. R. 23-002, Exh. A - "Amended Trial Court Case Assignment Procedures."

203 8 GUAM CODE ANN. §§ 1.17, 45.50 (2022). A defendant can waive the preliminary examination and be held over to court for arraignment on an information. 8 GUAM CODE ANN. § 45.50 (2022).

204 8 GUAM CODE ANN. § 45.50 (2022).

205 8 GUAM CODE ANN. §§ 45.60, 45.80 (2022).

206 8 GUAM CODE ANN. § 45.80 (2022).

207 8 GUAM CODE ANN. § 45.50 (2022).

208 Hamilton v. Alabama, 368 U.S. 52, 53-55 (1961).

negotiations and the entry of a guilty plea (which can occur at arraignment) are also critical stages of a criminal case, during which the defendant has the right to “effective assistance of competent counsel.”²⁰⁹

An arraignment cannot take place until prosecution is commenced, for a misdemeanor by the filing of a complaint, and for a felony by the filing of an information or an indictment; and once prosecution is commenced then the arraignment is to be held “promptly.”²¹⁰

- For a defendant who was “booked and released” at the time of their arrest (and also for a defendant who received a summons or citation instead of being arrested), this is the first time they appear in court before a judicial officer; and for most of those defendants who are indigent, it is the time when they request²¹¹ and first receive an appointed attorney. The arraignment on a misdemeanor typically occurs approximately 364 days after the person was arrested, while the arraignment on a felony typically occurs just shy of three years after arrest.²¹² At the conclusion of the arraignment, the case is allotted to a courtroom (and by that allotment, to a specific superior court trial judge) for all further proceedings.²¹³
- For a defendant who was “booked and confined” at the time of their arrest and therefore had a magistrate hearing, this is at least their second appearance before a judicial officer; and for most of those defendants who are indigent, they received an appointed attorney as part of their magistrate hearing. The arraignment on a misdemeanor typically occurs approximately 20 days after the magistrate hearing (because that was when the attorney general filed the complaint), and on a felony typically occurs 30 to 40 days after the magistrate hearing (because either an indictment was returned or the defendant waived their right to an indictment within that time).

An arraignment on Guam is almost an exact replica of the proceedings that occur at a magistrate hearing, with all of the same participants appearing in the same ways²¹⁴ (including being presided over by one of the two magistrates, rather than a judge), but there are a few important differences including choices that the defendant must make.

At the arraignment, the court reads the charging instrument to the defendant and calls on them to plead: not guilty; not guilty by reason of mental illness, disease, or defect; guilty; or nolo contendere with the consent of the court.²¹⁵ The defendant is required to enter a plea to the charge. Most defendants plead not guilty at arraignment, but magistrates have the authority to take guilty pleas and impose sentences in misdemeanor cases.

209 Lafler v. Cooper, 566 U.S. 156, 132 S. Ct. 1376, 1386 (2012); Padilla v. Kentucky, 559 U.S. 356, 373 (2010); McMann v. Richardson, 397 U.S. 759, 771, 771 n.14 (1970).

210 8 GUAM CODE ANN. § 60.10 (2022).

211 Any person who has received a notice to appear can walk in to the primary division office or the alternate division office to apply for an appointed attorney right away, and if they meet the eligibility requirements the division will assign an attorney to represent them right away rather than waiting until after the arraignment to do so, however this occurs only very rarely and there is no formal mechanism to advise people who have been arrested and released that this possibility exists.

212 For both misdemeanors and felonies, the arraignment for a “booked and released” defendant can occur sooner if the prosecutor files the charging document and has the defendant served with a summons to appear.

213 See GUAM S.Ct. ADMIN. R. 23-002, Exh. A - “Amended Trial Court Case Assignment Procedures.”

214 In-custody defendants appear by video from the department of corrections. Out-of-custody defendants are usually required to be physically present in the courtroom, but one of the magistrates occasionally allows a defendant to appear by video from another location if the defendant has a conflict or is unable to get transportation to the courthouse.

215 8 GUAM CODE ANN. §§ 60.10, 60.40 (2022).

The defendant must either assert or waive their right to a speedy trial. If the defendant asserts their speedy trial rights, they are guaranteed a trial within 45 days if they are incarcerated or 60 days if they are not incarcerated, but the trial could happen extremely soon (for example, as early as five days later), leaving little time for investigation or preparation. If the defendant waives their right to a speedy trial, the trial will usually be set for somewhere between 90 days and one year out, depending on the calendar of the particular judge to whom the case is allotted.

The defendant declares whether they desire a bench trial or a jury trial by a specified number of jurors. For a misdemeanor, the defendant can request a jury trial (of six jurors), and absent a request will have a bench trial. For a felony, the defendant can request a jury trial of 12 jurors, and absent a request will have a jury trial of six jurors. If the defendant's attorney fails to request a jury trial at arraignment, in most instances the judiciary will grant the attorney's request made at a later date in the proceedings.

These decisions, about how to plead, whether to assert speedy trial rights, and the type of trial desired, are decisions that must be made by the defendant and cannot be made by the attorney alone.²¹⁶ While the attorney must decide in each case "what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence,"²¹⁷ it is the defendant's decision about "whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal."²¹⁸ As one judge explains, if a defense attorney comes to arraignment and tells the magistrate they have not yet met with their client, the magistrate has to continue the arraignment so that attorney-client communications can occur.

Despite these requirements, most indigent defendants are represented *during their arraignment* by the primary division attorney or the alternate division attorney who happens to be scheduled to handle that day's arraignment docket,²¹⁹ rather than by the specific attorney who will actually be responsible for defending them.

- For indigent defendants who had a magistrate hearing: If a specific private attorney was appointed during the magistrate hearing to represent the defendant, then that appointed private attorney will most likely represent the defendant during the arraignment unless they turned out to be unavailable and a different private attorney needs to be appointed. If the primary division or the alternate division was appointed during the magistrate hearing to represent the defendant, then the specific division attorney who is responsible for defending the client in their case will talk to them in advance of the arraignment, but the defendant will be represented *during the arraignment only* by the relevant division attorney who happens to be handling arraignments on that day and is most often simply relying on notes contained in the appointed defendant's file.

²¹⁶ See GUAM R. PROF'L CONDUCT r. 1.2(a).

²¹⁷ *Gonzalez v. United States*, 553 U.S. 242, 248 (2008).

²¹⁸ *McCoy v. Louisiana*, 584 U.S. ___, 138 S. Ct. 1500, No. 16-8255 at 6 (2018); *Jones v. Barnes*, 463 U.S. 745, 751 (1983). See GUAM R. PROF'L CONDUCT r. 1.2(a).

²¹⁹ The primary division rotates division attorneys to handle arraignment dockets, while the alternate division has one part-time attorney who handles all arraignments.

- For indigent defendants who did not have a magistrate hearing and are appearing in court before a judicial officer for the first time, they will typically be represented *during the arraignment only* by the relevant division attorney who happens to be handling arraignments on that day. For all of these indigent defendants who want an appointed attorney and whom the magistrate finds financially eligible to receive one, the magistrate appoints either the primary division or the alternate division or a private attorney.²²⁰ In most circumstances, the defendant leaves their arraignment not knowing the identity of the specific attorney who will represent them, and most often no specific individual attorney has yet been assigned to their case. The process of assigning a specific attorney to represent a specific defendant takes time, during which the indigent defendant is not actively represented by any attorney.

Nonetheless, the arraignment commences the formal prosecution of a defendant and sets in motion deadlines for the defendant's case. At a later date (but within 90 days) and without input from the attorneys in the case, the judge presiding over the case enters a scheduling order, setting dates for motion hearings, a pretrial conference (typically set for one week before the trial date), and trial.²²¹

220 Prior to November 17, 2023, the courts were required to appoint counsel in the following order: "(1) The Public Defender Service Corporation; (2) The Alternate Public Defender Office; (3) The Private Attorney Panel; and (4) Active members of the Guam Bar Association." GUAM SUPER. CT LOCAL R. MR 1.1.3(a) (prior to amendment of Nov. 17, 2023). Because so few attorneys have been willing to serve as panel attorneys for felony and misdemeanor cases, on November 17, 2023, the supreme court temporarily suspended (from November 17, 2023, through May 17, 2024) the making of appointments to panel attorneys for felony and misdemeanor cases. Promulgation Order 06-006-25, *Amendments to Miscellaneous Rule 1.1.3 of the Local Rules of the Superior Court of Guam (Indigent Defense Rule)* (Guam Nov. 17, 2023).

221 GUAM SUPER. CT LOCAL R. CR 1.1.

CHAPTER VI

Providing Counsel at Critical Stages

The first factor that triggers a presumption of ineffectiveness is the absence of counsel for the accused, or the “actual” denial of counsel. “Most obvious[ly],” as the U.S. Supreme Court said in *Cronic*, each governing jurisdiction is responsible for ensuring that every indigent defendant who does not choose to self-represent and who faces possible loss of liberty in a criminal case is actually represented by an attorney at every critical stage of the proceeding.²²²

Because all crimes on Guam are either a felony, misdemeanor, or petty misdemeanor, and they all carry possible imprisonment as a sentence upon conviction,²²³ every person charged with a crime who cannot afford to hire their own attorney is entitled under the Sixth and Fourteenth Amendments to have an attorney provided at public expense to represent them.²²⁴

FINDING 1: Guam does not collect, analyze, or report on actual denial of counsel statistics.

No Guam entity is responsible for knowing how many defendants in criminal cases request appointed counsel and then are:

- found to be ineligible for appointed counsel and represent themselves (pro se defendants); or
- found to be ineligible for appointed counsel and obtain their own representation.²²⁵

Without knowing the number of pro se defendants it is impossible to accurately understand the potential effects of possible future criminal justice policy decisions. For example, with the October 2023 change to the

222 United States v. *Cronic*, 466 U.S. 648, 659 (1984). See also *In re Gault*, 387 U.S. 1, 36 (1967) (“The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child ‘requires the guiding hand of counsel at every step in the proceedings against him.’”) (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)).

223 9 GUAM CODE ANN. § 1.18(a) (2022). See 8 GUAM CODE ANN. § 5.50 (2022).

224 *Halbert v. Michigan*, 545 U.S. 605 (2005); *Alabama v. Shelton*, 505 U.S. 654 (2002); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *In re Gault*, 387 U.S. 1 (1967); *Douglas v. California*, 372 U.S. 353 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963); 725 ILL. COMP. STAT. § 5/113-3(b) (2018) (counsel “shall” be appointed “if the court determines that the defendant is indigent and desires counsel” in every case that carries a penalty other than “fine only”).

225 As explained later in this report, there are various requirements in Guam law for the courts and/or the PDSC corporation to track and report on the cases in which counsel is appointed. This finding focuses on those cases in which counsel is not appointed.

The judiciary’s electronic case management system shows, on a case-by-case basis, whether each defendant was represented by counsel, but the data is not aggregated and reported on so that it can be analyzed. For those defendants who are pro se in the judiciary’s data, there is no mechanism to readily determine whether they voluntarily chose to represent themselves or did so because they were found ineligible for an appointed attorney.

eligibility guidelines, a larger number of defendants are likely projected to receive appointed counsel but how that affects the indigent defense systems is unknown.

FINDING 2: Constructive denial of counsel can occur because a specific unconflicted attorney may not be assigned to represent a defendant for weeks, or sometimes months, after the defendant's arraignment.

The Guam government is responsible for ensuring that, where an attorney is appointed to represent an indigent defendant, that appointed attorney is able to provide effective representation.²²⁶ In *United States v. Cronin*, the U.S. Supreme Court explains that deficiencies in indigent defense systems can make any lawyer – even the best lawyer – perform in a non-adversarial way that results in a “constructive” denial of counsel.²²⁷

Whether a defendant is in- or out-of-custody, their initial appearance before a judicial officer is the proceeding on Guam that triggers the attachment of the right to counsel under *Rothgery v. Gillespie County*.²²⁸ From that moment forward, every indigent defendant has the right to be effectively represented by appointed counsel during every critical stage of their case, unless they make an informed and intelligent waiver of their right to counsel. The right to counsel guaranteed to an indigent defendant is the right to be represented by an attorney who does not have a conflict of interest.²²⁹

An indigent defendant who was “booked and confined” at the time of their arrest receives an appointed attorney at their magistrate hearing, held within 48 hours of their arrest. An indigent defendant who was “booked and released” at the time of their arrest receives an appointed attorney at their arraignment, which typically occurs approximately 364 days after the person was arrested on a misdemeanor and just shy of three years after the person was arrested on a felony. Regardless of whether counsel is appointed at a magistrate hearing or at an arraignment, the primary division will be appointed unless they or the magistrate are aware at the time of the proceeding that the primary division has a conflict of interest in representing the particular defendant in their particular case.

226 See, e.g., *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (“It has long been recognized that the right to counsel is the right to the effective assistance of counsel.”).

227 *United States v. Cronin*, 466 U.S. 648, 659-60 (1984) (“[I]f counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. . . . Circumstances of that magnitude may be present on some occasions when, although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. *Powell v. Alabama*, 287 U.S. 45 (1932), was such a case.”); *Strickland v. Washington*, 466 U.S. 668, 683 (1984) (citing *United States v. Cronin*, 466 U.S. 648 (1984): “The Court has considered Sixth Amendment claims based on actual or constructive denial of the assistance of counsel altogether, as well as claims based on state interference with the ability of counsel to render effective assistance to the accused.”).

228 *Rothgery v. Gillespie County*, 554 U.S. 191, 211 (2008). See also *Michigan v. Jackson*, 475 U.S. 625, 629 n.3 (1986); *Brewer v. Williams*, 430 U.S. 387, 388-89 (1977).

229 See, e.g., *Wood v. Georgia*, 450 U.S. 261, 271 (1981) (“Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest.”); *Cuyler v. Sullivan*, 446 U.S. 335, 346 (1980) (“Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial.”); *Glasser v. United States*, 315 U.S. 60, 70 (1942).

When the primary division is appointed to represent an indigent defendant, within a day or two the primary division's leadership assigns a specific primary division attorney to defend the appointed client.²³⁰ The specific primary division attorney who is assigned is responsible for determining whether the primary division must withdraw on the basis of a conflict of interest. In some instances, a conflict of interest does not become apparent until discovery is received from the prosecutor and/or until the defense can conduct an independent investigation. In other instances, though, potential conflicts of interest are apparent almost from the moment of appointment. Whenever conflicts of interest become known, the primary division attorneys sometimes ignore these conflicts in the hope of resolving the case without withdrawing.

This practice places the needs of the "system" (attempting to minimize the demands on the alternate division and the appointed private attorneys) over the ethical and constitutional obligations due to appointed clients (the right to conflict-free effective assistance of counsel). Indigent defendants in these circumstances are denied conflict-free effective assistance of counsel at the critical stages of at least their arraignment and during the pre-trial period between arraignment and the beginning of trial, and in some instances during plea negotiations and at the entry of a guilty plea and also at sentencing.²³¹

If the primary division does eventually declare a conflict, then it takes additional time for them to formally withdraw and for the system to sort out who the next appointed lawyer will be and for that attorney to then start actually working. During this time from arrest to appointment of the unconflicted attorney who will actually defend against the charges, defendants' cases can go uninvestigated, exculpatory evidence may be lost, witnesses become unreachable, and crime scenes deteriorate.

230 Primary division attorneys are assigned to a specific courtroom where they represent a portion of the appointed clients whose cases are allotted to that courtroom (and by that allotment, to a specific superior court trial judge). The only exception is that an attorney newly hired into the primary division is not assigned to a courtroom until they have been employed in the primary division for a few months. During their first few months of employment in the primary division, a newly hired attorney is assigned only to the rotation for magistrate hearings and arraignments.

231 See,

- arraignments. *Hamilton v. Alabama*, 368 U.S. 52, 53-55 (1961).
- during the pre-trial period between arraignment and the beginning of trial. *Brewer v. Williams*, 430 U.S. 387, 398-99 (1977); *Powell v. Alabama*, 387 U.S. 45, 57 (1932).
- during plea negotiations and at the entry of a guilty plea. *Lafler v. Cooper*, 566 U.S. 156, 132 S. Ct. 1376, 1386 (2012); *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010); *McMann v. Richardson*, 397 U.S. 759, 771, 771 n.14 (1970).
- during sentencing. *Lafler v. Cooper*, 566 U.S. 156, 132 S. Ct. 1376, 1386 (2012); *Wiggins v. Smith*, 539 U.S. 510, 538 (2003); *Glover v. United States*, 531 U.S. 198, 203-04 (2001); *Mempa v. Rhay*, 389 U.S. 128, 134, 137 (1967).

CHAPTER VII

Providing Qualified, Trained, and Supervised Attorneys

In *United States v. Cronin*, the U.S. Supreme Court points to the facts in the case of *Powell v. Alabama*²³² as demonstrating the constructive denial of counsel.²³³ In the *Powell* case, the judge overseeing the defendants' trial appointed as defense counsel a real estate lawyer who was not licensed in Alabama and was admittedly unfamiliar with the state's rules of criminal procedure.²³⁴ The *Powell* Court concluded that defendants require the "guiding hand" of counsel;²³⁵ that is, the attorneys a government provides to represent indigent people must be qualified and trained to help those people advocate for their stated legal interests.

Although attorneys graduate from law school with a strong understanding of the principles of law and legal theory and generally know how to think like a lawyer, no law school graduate enters the legal profession automatically knowing how to be a criminal defense lawyer.²³⁶ Expertise and skill must be developed. Just as one would not go to a dermatologist for heart surgery, a real estate or divorce lawyer cannot be expected to handle a complex criminal case competently. Attorneys must know what legal tasks need to be considered in each and every case they handle and must know how to perform all of those tasks.

To ensure that attorneys continue to be competent from year to year to represent indigent defendants in the types of cases they are assigned, national standards require the indigent defense system to provide attorneys with access to a "systematic and comprehensive" training program,²³⁷ at which attorney

232 *Powell v. Alabama*, 287 U.S. 45, 53-56 (1932).

233 *United States v. Cronin*, 466 U.S. 648, 659-60 (1984) ("[I]f counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. . . . Circumstances of that magnitude may be present on some occasions when, although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. *Powell v. Alabama*, 287 U.S. 45 (1932), was such a case.")

234 A retired local Alabama attorney who had not practiced in years was also appointed to assist in the representation of all nine co-defendants.

235 *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932) ("The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.").

236 Christopher Sabis and Daniel Webert, *Understanding the Knowledge Requirement of Attorney Competence: A Roadmap for Novice Attorneys*, 15 GEO. J. LEGAL ETHICS 915, 915 (2001-2002) ("[B]ecause legal education has long been criticized as being out of touch with the realities of legal practice and because novice attorneys often lack substantive experience, meeting the knowledge requirements of attorney competence may be particularly difficult for a lawyer who recently graduated from law school or who enters practice as a solo practitioner.").

237 NATIONAL ADVISORY COMM'N ON CRIM. JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch. 13 (The Defense), std. 13.16 (1973). See also AMERICAN BAR ASS'N, CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION, std. 4-1.12(b) (4th ed. 2017).

attendance is compulsory.²³⁸ Training must be tailored to the types and levels of cases for which the attorney is appointed.²³⁹ For example, an attorney who is appointed in drug-related cases must be trained in the latest forensic sciences and case law related to drugs. Ongoing training, therefore, is an active part of the job of being an indigent defense system attorney.

Attorneys who were once well-qualified and well-trained can, for any number of reasons, lose their competency to handle cases over time, and indigent people do not get to choose which attorney is assigned to represent them. National standards require that all indigent defense system attorneys must be “supervised and systematically reviewed” to ensure that they continue to provide effective assistance of counsel to each and every indigent client.²⁴⁰ Implicit within supervision is that the supervisor has authority to ensure an attorney is no longer assigned if they are no longer competent.

For all of these reasons, national standards require that each attorney must have the qualifications, training, and experience necessary for each specific type of case to which they are appointed.²⁴¹ As national standards explain, an attorney’s ability to provide effective representation in a criminal case depends on their familiarity with the “substantive criminal law and the law of criminal procedure and its application in the particular jurisdiction.”²⁴² The American Bar Association observed over 30 years ago that “[c]riminal law is a complex and difficult legal area, and the skills necessary for provision of a full range of services must be carefully developed. Moreover, the consequences of mistakes in defense representation may be substantial, including wrongful conviction and death or the loss of liberty.”²⁴³

FINDING 3: Guam does not have adequate attorney qualification, training, and supervision standards.

PDSC corporation. The PDSC board is responsible for establishing rules and regulations regarding employees of the PDSC corporation, including their selection, retention, and compensation.²⁴⁴ The PDSC corporation’s executive director has the final statutory authority to hire attorneys for all of the divisions within the PDSC corporation and is also responsible for training and supervising them, all in compliance with any rules, regulations, or policies established by the PDSC board.²⁴⁵ In practice, all of these responsibilities are carried out on a day-to-day basis by the PDSC corporation’s deputy director for the primary division and by the alternate division’s managing attorney for the alternate division.²⁴⁶

238 AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 9 & cmt. (2002).

239 AMERICAN BAR ASS’N, CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION, std. 4-1.12(c) (4th ed. 2017).

240 See AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 10 (2002).

241 See, e.g., AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 6 & cmt. (2002).

242 NATIONAL LEGAL AID & DEF. ASS’N, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION, guideline 1.2(a) (1995).

243 AMERICAN BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES, § 5-1.5 & cmt. (3d ed. 1992).

244 4 GUAM CODE ANN. § 4105 (2022); 12 GUAM CODE ANN. § 11110 (2022). See 4 GUAM CODE ANN. § 6302 (2022). See, e.g., Guam Public Defender Service Corporation Resolution No. PDSC 06-11, *The Gubetnamenton Guahan Competitive Wage Act of 2011 (Public Law 30-196)* (adopted June 7, 2011) (attaching as Exh. A the “Hay Pay Scale” showing intended Oct. 1, 2010, compensation levels for all PDSC employees).

245 12 GUAM CODE ANN. § 11109 (2022).

246 See, e.g., “Agreement Between the Judicial Council of Guam and the Public Defender Service Corporation” recitals F, G (October 1, 2019).

Attorney qualification standards. The only required qualification for a person to be hired as an attorney at the PDSC corporation is that they be an attorney either licensed by Guam (an “active” member of the Guam Bar Association) or admitted to and in good standing in “the highest court of any state, district, commonwealth, territory²⁴⁷ or possession of the United States” (a “temporary active” member of the Guam Bar Association).

The lack of additional mandatory qualifications does not mean PDSC corporation attorneys are unqualified. Indeed, the PDSC corporation actively recruits off-island by distributing job listings²⁴⁸ to the National Association for Public Defense and creates interview panels²⁴⁹ to try to make good hires. The lack of required qualifications means that the quality of attorneys hired may be dependent on the personalities of the people making the hires.

New attorney training standards. While some attorneys have years of experience practicing law when they are hired within the PDSC corporation, other attorneys come to the PDSC corporation straight out of law school with no practice experience at all. There is no formal or standardized training program for attorneys newly hired at either the primary division or the alternate division. Instead, less experienced attorneys within each division are encouraged to watch more experienced division attorneys in court and seek guidance from them.

The more senior primary division attorneys typically “try to take on a new hire” and “show them the ropes,” such as how to provide advice to clients about immigration and deportation, which motions to file in specific situations, and how to make an effective bail argument.

For newly hired attorneys at the alternate division, the alternate division’s managing attorney determines on a case-by-case basis what training that attorney needs. For example, if a newly hired alternate division attorney is new to Guam, then the attorney will be specifically assigned to shadow another alternate division attorney and the managing attorney second-chairs a few of the new attorney’s court proceedings.

On-going training standards. All Guam attorneys are required to obtain ten hours of continuing legal education each year, of which at least two hours must be legal ethics or professionalism.²⁵⁰ Guam’s statutes

247 The Sixth Amendment Center respectfully acknowledges Guam’s prohibition against the use of the term “territory” and uses it in this report only when quoting directly from legal documents or the writing of others. See 1 Guam Code Ann. § 420 (2022) (“In the interest of promoting self-respect and in recognition of the necessarily pejorative, diminishing and colonial aspects of the term *territory* within the context of American law, the term *territory of Guam* or its derivatives, such as *territorial*, shall not be used in direct titular association with the island, people, or government of Guam or for the purposes of direct self-description, in any government document or otherwise as part of any government title.”).

248 To apply for an open attorney position, an applicant must, in response to a job posting, submit an employment application packet to the government of Guam. The application packet includes the applicant’s resume, transcript, bar license, and character & standing or fitness reports. As part of the PDSC administration’s duties on behalf of all of its divisions, the sole human resources specialist within the PDSC administration receives and reviews each application and directs it to whichever division is hiring for the attorney position.

249 The interview panels are made up of: an equal employment opportunity representative, whose only role is to ensure that the process complies with Guam’s equal employment opportunity laws; the division’s supervising attorney (at the primary division, either the executive director or the deputy director; at the alternate division, the managing attorney); and some number of additional attorneys from the division. Ahead of each interview, the interview panel prepares a written “interview plan” containing the questions they will ask of an applicant. None of the divisions within the PDSC corporation have any formal or written criteria to determine whether to hire or reject an applicant for an attorney position.

250 GUAM RULE GOVERNING MANDATORY CONTINUING LEGAL EDUCATION.

and court rules do not establish any further or more specific training requirements for attorneys who are appointed to represent indigent people, for example, related to the types of cases in which they represent indigent people.

Even within the PDSC corporation, none of the divisions have any requirements for their attorneys to receive training related to the types of cases to which they are appointed. No person within the PDSC corporation is formally assigned responsibility for ensuring that PDSC corporation attorneys receive the on-going training they need to provide effective assistance of counsel.

The PDSC corporation does not have a budget line item dedicated to the costs of training appointed attorneys (nor for training of non-attorney staff). From January 2014 through November 2017, the PDSC board regularly approved the expenditure of the PDSC corporation's lapsed funds to provide training for some number of PDSC corporation attorneys and non-attorney staff.²⁵¹ There is no apparent indication that the PDSC board has approved any training expenditures from December 2017 through the present, so it is unclear whether the PDSC corporation (or any of its individual divisions) has spent any funds to provide training during those years.

To the extent that each attorney who represents indigent people on Guam voluntarily chooses to obtain training relevant to that representation, they face greater barriers to doing so than attorneys in most of the jurisdictions that provide a Sixth Amendment right to counsel. This is because Guam attorneys must obtain training either on-island or off-island, and both have limitations.

The training available on-island in the types of cases that carry a right to appointed counsel is provided by either the PDSC corporation or by some aspect of the Guam legal community. By far the greatest portion of Guam's attorneys who practice in the areas that have a right to counsel are the attorneys employed with the PDSC corporation, so there is little need or desire for the broader Guam legal community to provide or receive training in these practice areas. As a result, unless the PDSC corporation provides it, there usually is not any on-island training for the skills, procedures, and substantive law that appointed attorneys need.

From time to time, the PDSC corporation provides in-house training (open to all PDSC corporation attorneys and to all appointed private attorneys, and usually certified for continuing legal education credits) that focuses on current issues of indigent defense system attorneys in representing their appointed clients. Occasionally, the PDSC corporation brings national defense experts to Guam to provide training, and it makes these training programs available to all of Guam's indigent defense system attorneys (both PDSC corporation attorneys and appointed private attorneys). When PDSC provides in-house training, the PDSC corporation attorneys are required to attend unless they must be in court, while attendance is optional for appointed private attorneys. Many attorneys take advantage of every training opportunity offered. From

²⁵¹ See, e.g., Guam Public Defender Service Corporation Resolution No. PDSC 06-14, *The Use of Alternate Public Defender Lapsed Funds to Cover Costs Associated With Attorney Eric R. Overton's Attendance at the California Attorneys for Criminal Justice (CACJ) Annual Fall Criminal Defense Seminar* (adopted Jan. 14, 2014), through Guam Public Defender Service Corporation Resolution No. PDSC 04-18, *The Use of Lapsed Funds for PDSC/APD Attorneys & Investigator to Attend a Trial Clinic With Trainers Laurie Shanks, Terry Kindlon & Faheemah Downs January 17-19, 2018 Tumon, Guam* (adopted Nov. 28, 2017).

time to time, the Guam judiciary sponsors on-island training for specialty court teams and stakeholders that include primary division and alternate division attorneys.

There is a wealth of training available off-island in every type of case and every aspect of providing representation, but it is a significant expenditure of both time and money for any Guam attorney to attend these training programs in person. It is increasingly possible and common for attorneys to virtually attend training programs being presented anywhere, but this seldom allows for the hands-on skills training and case development workshops that are a large part of the training needed by appointed trial attorneys.

The PDSC corporation attorneys report being authorized to travel outside of Guam for training opportunities from time to time, and the PDSC corporation pays for the costs of the attorneys to attend these off-island programs. The off-island training programs attended by PDSC corporation attorneys allow the attorneys to obtain extensive and focused, hands-on training, geared toward the types of cases they are appointed to defend; including, for example, programs offered by the National Association for Public Defense, bring-your-own-case criminal defense appellate training, specialty court training for the entire team (sometimes sponsored by the Guam judiciary), youth defender advocacy, and training on national standards for public defense attorneys. In addition, there are off-island training opportunities offered by the Pacific Judicial Council.

The primary division attorneys meet all together every weekday morning at 8:30 a.m. (to discuss who will cover which courtrooms, any current issues, and any updates on policy change), meet informally with one another every day, and hold “brainstorming sessions” about their cases every other month. Every attorney in the primary division has an “open-door policy,” and primary division attorneys say their questions never go unanswered - “we are spoiled by our culture” where the primary division attorneys help each other out and closely collaborate with one another.

Attorney performance standards. While there are many national standards for attorney performance in representing defendants charged with crimes, Guam has not through statute, court rule, or policy made any of these standards binding on its indigent defense system attorneys, and it has not promulgated any such standards of its own. As a result, there are no mandatory standards against which to train Guam’s indigent defense system attorneys who are appointed in adult criminal trial-level cases,²⁵² nor are there any mandatory standards against which to measure their performance.

The PDSC board has not approved any standards governing attorney performance in adult representation, so there is no internal standard against which to train PDSC corporation attorneys who are appointed in adult criminal trial-level cases, nor is there any standard against which to measure their performance.

252 In 2018, the PDSC corporation received technical assistance from the Center for Justice Innovation (formerly known as the Center for Court Innovation) through a U.S. Bureau of Justice Assistance grant to develop attorney performance standards and help grow holistic defense capacity by creating a plan for hiring a social worker. Development of the attorney performance standards for representation in adult criminal cases stalled during the pandemic and had not yet been adopted at the time of this report. See PDSC Attorney Performance Standards (draft, as of Mar. 7, 2023).

In July 2022, the PDSC board adopted performance guidelines for juvenile defense representation, which its divisions have begun to use for training in juvenile representation. PDSC Performance Guidelines for Juvenile Defense Represented (rev’d July 20, 2022).

Performance standards adopted by the PDSC board are not binding on appointed private attorneys.

Supervision. These same informal methods of training primary division attorneys (described above) are also the informal methods primarily used to supervise all of the primary division attorneys, in addition to annual performance evaluations conducted by the PDSC corporation's deputy director (or occasionally by the executive director). As one PDSC corporation attorney put it, it is important to supervise PDSC corporation attorneys in a way that does not alienate them, because the attorneys “have plenty of options” for other employment on Guam.

Any on-going supervision of alternate division attorneys is informal and provided “only as needed.” For example, no one purports to supervise the part-time alternate division attorney who handles all magistrate hearings and arraignments. The alternate division's managing attorney from time-to-time conducts performance evaluations of alternate division attorneys, but the frequency of performance reviews varies depending on how long the attorney has been at the alternate division and how many years of experience they have as an attorney – ranging from once a year to every 18 months or longer. The most frequent complaint from alternate division clients, received almost daily, is from in-custody clients who feel they are lacking contact with their alternate division attorney, which the alternate division responds to by having its (non-attorney) management officer speak to the client, informing the responsible attorney of the call, and where immediate contact is needed having either the attorney or an alternate division investigator visit the client in detention.

Appointed private attorneys. The judiciary also does not have adequate attorney qualification, training, and supervision standards for appointed private attorneys.

Attorney qualification standards. Under normal circumstances, no one actively recruits attorneys to become a panel attorney. In late 2022, in response to the lessening number of panel attorneys, the then-chief justice reached out to all the private law firms on Guam asking each one to have at least one of their associate attorneys participate as a panel attorney.

Guam's court rules require that every panel attorney must be a member of the Guam Bar Association, with “when applicable, prior criminal trial experience, significant involvement in serious or complex criminal cases, knowledge of the Rules of Criminal Procedure, and the bail statutes, knowledge of other relevant areas of criminal practice, clinical experience or participation in trial advocacy programs, prior juvenile [or] guardian ad litem and/or appellate experience.”²⁵³ Attorneys who want to be a panel attorney are required to submit their “Private Attorney Panel Application” to the Supreme Court of Guam,²⁵⁴ and the court clerk provides copies of each application to the PAP standing committee members.

The PAP standing committee reviews the application to determine “whether the applicant possesses the qualifications required for the PAP.”²⁵⁵ Standing committee members assess the qualifications of applicants either to be approved for felonies, misdemeanors, juvenile cases, or appeals, or to be rejected. If the standing

253 GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(2)(A).

254 GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(2).

255 GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(2)(D).

committee determines that an applicant does possess the required qualifications, the standing committee is required by the court rules to approve the application, which is then distributed to all justices and judges to allow them to comment.²⁵⁶ Ultimately, though, it is the chief justice who determines whether each applicant is placed on the panel attorney list and for which case type(s).²⁵⁷ There is no indication that any applicant has been rejected in recent history.

The court rules intend for the panel to have 10 to 15 panel attorneys available for appointment in each of five categories: felony; misdemeanor; juvenile, including juvenile delinquency and person in need of services cases; guardian ad litem in juvenile cases; and appellate.²⁵⁸ At no time during the past five years has there been the intended number of panel attorneys.

Training standards. There is no requirement that private attorneys who are appointed to represent indigent people on Guam (whether panel attorneys or non-panel attorneys) obtain any training in the types of cases to which they are appointed. Whenever the PDSC corporation provides in-house training, including when it brings national defense experts to Guam to provide training, all appointed private attorneys (both panel attorneys and non-panel attorneys) are allowed to attend if they choose to do so, and these training programs are usually certified for continuing legal education credits.

As the number of panel attorneys has decreased and the number of involuntary appointments of non-panel attorneys has increased, the Guam judiciary requested the PDSC corporation to design and provide a training series expressly for the benefit of appointed private attorneys. Beginning February 2023, the PDSC corporation began presenting twice-monthly training programs that are certified for continuing legal education credits - the “Indigent Criminal Defense Series” - designed by the PDSC corporation’s deputy director. Appointed private attorneys are not required to attend, but it is the judiciary’s hope that the existence of this training program will encourage private attorneys to become panel attorneys and will provide them with the skills and knowledge necessary to provide effective representation to their appointed clients.

Attorney performance standards. As stated above, Guam has not through statute, court rule, or policy made any national performance standards binding on its indigent defense system attorneys, and it has not promulgated any such standards of its own. As a result, there are no mandatory standards against which to train appointed private attorneys nor are there any mandatory standards against which to measure their performance.

Supervision. Although the supreme court “create[d] a Standing Committee to oversee the Private Attorney Panel,”²⁵⁹ the court rules do not provide any method or authority by which the standing committee can actually oversee the provision of counsel by panel attorneys who are appointed to represent indigent

256 GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(2).

257 GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(2)(F).

258 GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(2)(G).

259 GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(1)(A).

defendants. There is no mechanism for anyone to evaluate or supervise the private attorneys (panel attorneys and non-panel attorneys) in their representation of appointed clients, other than through court sanctions or referral to the Guam Bar Association for disciplinary proceedings (and no justice system stakeholder can recall any disciplinary referral ever having been made in relation to an appointed private attorney's representation of a trial-level client).

FINDING 4: The courts' practice of appointing non-panel attorneys without determining whether they have the necessary knowledge, skills, and abilities to provide effective representation, and then failing to provide independent supervision of those attorneys, can cause a constructive denial of counsel.

Until early 2023, when the court had to appoint a non-panel attorney, the judge presiding over the case would simply appoint an attorney whom that judge thought would be able to provide effective assistance of counsel in the particular type of case involved. There were no formal qualifications that an attorney was required to have before being appointed in a particular type of case, and there was nothing to ensure that involuntary appointments were distributed equitably among the private attorneys of the Guam bar.

Beginning in approximately February 2023, the courts changed their procedures for the involuntary appointment of non-panel private attorneys. Today, the supreme court compiles and maintains a list of the non-panel attorneys whom a judge can appoint.²⁶⁰ To compile the list, the supreme court clerk begins with the list of all attorneys who are active members of the Guam Bar Association. Then, using the information supplied by the attorneys as part of their licensure requirements, the supreme court clerk removes from the list everyone who is an employee of the federal government, an employee of any Guam governmental body, or an employee of any legal services provider. The resulting alphabetical list of non-panel attorneys contains all attorneys in private practice who maintain an active Guam license even though they may not be actively practicing law or may not be presently living and working on Guam.²⁶¹

The court does not consider the qualifications or experience of the non-panel attorneys in making appointments.²⁶² As a result, the court has at times appointed non-panel attorneys who lack any experience or training in criminal defense to represent indigent defendants facing felony and/or misdemeanor prosecution in the trial court. For example:

- a felony case was assigned to a lawyer who had never in his career been to court;
- a homicide case was assigned to an estate lawyer;
- an environmental lawyer was appointed to a human trafficking case;
- an attorney who works full-time as a teacher was assigned a felony case.

²⁶⁰ See GUAM SUPER. CT LOCAL R. MR 1.1.3(a) (as amended Nov. 17, 2023); Promulgation Order 06-006-25, *Amendments to Miscellaneous Rule 1.1.3 of the Local Rules of the Superior Court of Guam (Indigent Defense Rule)* (Guam Nov. 17, 2023).

²⁶¹ For example, a Guam attorney with an active license who goes to the United States to care for a family member for six months is not expected to change their address with the Guam Bar Association.

²⁶² Some judicial officers say there is an unwritten internal agreement among the judicial officers of the superior court to only appoint non-panel attorneys in felony cases who have been licensed to practice law for more than seven years, while others say there is no such agreement.

The court has also, at times, appointed non-panel attorneys who are not living or practicing law on Guam. For example, an attorney who works for his law firm in its Japan office was appointed to a case because the court's list does not show office locations.

Non-panel attorneys who are located off-island at the time of appointment or who believe they lack the necessary competence to effectively handle the type of case to which they have been appointed can, and frequently do, file a motion to withdraw. The judges usually grant motions to withdraw that are filed for these reasons, but not always. When an appointed private attorney is allowed to withdraw, the court must appoint another private attorney, and all of this results in greater and greater periods of time during which the indigent person is not being represented in their case.

The court's new process of considering every Guam private attorney as available for the court to appoint has provoked varying views, ranging from the belief that indigent people should not be provided an involuntarily conscripted and unwilling attorney, to the idea that every attorney should willingly accept court-appointed work as a public service.

CHAPTER VIII

Sufficient Time & Resources

The U.S. Supreme Court in *Powell v. Alabama* notes that the lack of “sufficient time” to consult with counsel and to prepare an adequate defense was one of the primary reasons for finding that the defendants were constructively denied counsel.²⁶³ As one state supreme court observed, “as the practice of criminal law has become more specialized and technical, and as the standards for what constitutes reasonably effective assistance of counsel have changed, the time an appointed attorney must devote to an indigent’s defense has increased considerably.”²⁶⁴

Impeding counsel’s time “is not to proceed promptly in the calm spirit of regulated justice, but to go forward with the haste of the mob,” the *Powell* Court explained.²⁶⁵ The lack of sufficient time may be caused by any number of things, including but not limited to payment arrangements that create financial incentives for lawyers to dispose of cases quickly rather than in the best interests of their clients, or excessive workloads. Whatever the cause, insufficient time to prepare and present an effective defense for each indigent defendant is a marker of the constructive denial of counsel.

No matter how complex or simple a case may seem at the outset, no matter how little or how much time an attorney wants to spend on a case, and no matter how financial matters weigh on an attorney, there are certain fundamental tasks each attorney must do on behalf of every client in every criminal case. Even in the simplest case, the attorney must, among other things:

- meet with and interview the client;
- attempt to secure pretrial release if the client remains in custody (but, before doing so, learn from the client what conditions of release are most favorable to the client);
- keep the client informed throughout the duration of proceedings;
- request and review discovery from the prosecution;
- independently investigate the facts of the case, which may include learning about the defendant’s background and life, interviewing both lay and expert witnesses, viewing the crime scene, examining items of physical evidence, and locating and reviewing documentary evidence;
- assess each element of the charged crime to determine whether the prosecution can prove facts sufficient to establish guilt and whether there are justification or excuse defenses that should be asserted;
- prepare appropriate pretrial motions and read and respond to the prosecution’s motions;
- prepare for and appear at necessary pretrial hearings, and preserve the client’s rights in those hearings;

²⁶³ *Powell v. Alabama*, 287 U.S. 45, 59 (1932).

²⁶⁴ *State v. Wigley*, 624 So.2d 425, 428 (La. 1993).

²⁶⁵ *Powell v. Alabama*, 287 U.S. 45, 59 (1932).

- develop and continually reassess the theory of the case;
- assess all possible sentencing outcomes that could occur if the client is convicted of the charged crime or a lesser offense;
- negotiate plea options with the prosecution, including sentencing outcomes; and
- all the while prepares for the case to go to trial (because the decision about whether to plead or go to trial belongs to the client, not to the attorney).²⁶⁶

The time an appointed attorney can devote to accomplishing each of these tasks in each defendant's case depends on the total amount of time the attorney has available for all professional endeavors and the total amount of work the attorney must accomplish in that available time. This discussion is often framed in terms of "caseloads" or "workloads."

Caseload refers to the raw, quantifiable number of cases an attorney handles during a particular period of time. A lawyer's total annual caseload is the count of all indigent representation system cases in which the lawyer provides representation during a given year, starting with the number of cases the attorney had open at the beginning of the year and adding to that the number of cases assigned to the attorney during the year.

In addition to considering the raw number of cases of each type that an attorney handles, the U.S. Department of Justice has advised, and national standards agree, that "caseload limits are no replacement for a careful analysis of a public defender's *workload* . . ."²⁶⁷ Workload includes the cases an attorney is appointed to handle within a given system (i.e., caseload), but it also includes the cases an attorney takes on privately, public representation cases to which the attorney is appointed by other jurisdictions, and other professional obligations such as obtaining and providing training and supervision.²⁶⁸ Further, national standards agree that the lawyer's workload must take into consideration "all of the factors affecting a public defender's ability to adequately represent clients, such as the complexity of cases on a defender's docket, the defender's skill and experience, the support services available to the defender, and the defender's other duties."²⁶⁹

266 *McCoy v. Louisiana*, 584 U.S. ___, 138 S. Ct. 1500, No. 16-8255 at 6 (2018); *Jones v. Barnes*, 463 U.S. 745, 751 (1983). See GUAM R. PROF'L CONDUCT r. 1.2(a); NATIONAL LEGAL AID & DEFENDER ASS'N, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION (1995).

267 Statement of Interest of the United States at 9, *Wilbur v. City of Mount Vernon*, No. C11-1100RSL, ECF No. 322 (W.D. Wash. filed Dec. 4, 2013), <http://www.justice.gov/crt/about/spl/documents/wilbursoi8-14-13.pdf>; AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 5 cmt. (2002).

268 AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 5 cmt. (2002).

269 Statement of Interest of the United States at 9, *Wilbur v. City of Mount Vernon*, (W.D. Wash. filed Dec. 4, 2013) (No. C11-1100RSL), ECF No. 322, <http://www.justice.gov/crt/about/spl/documents/wilbursoi8-14-13.pdf>. See, e.g., Mary Sue Backus & Paul Marcus, *The Right to Counsel in Criminal Cases, A National Crisis*, 57 HASTINGS L. J. 1031, 1125 (2006); NATIONAL STUDY COMM'N ON DEFENSE SERV., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 5.1 (1976).

FINDING 5: Guam does not collect and analyze the necessary information to accurately determine the caseloads or workloads of indigent defense system attorneys.

Certain information is necessary for policymakers and justice system stakeholders to plan for the future needs of Guam's indigent defense system and to ensure that there are a sufficient number of attorneys with sufficient time to provide effective representation to each indigent defendant. This information includes how much time is actually required to effectively represent each indigent defendant in each type of case, how many cases each indigent defense system attorney is handling in a given year, what other workload responsibilities each indigent defense system attorney has in a given year, and whether each indigent defense system attorney is working with sufficient support to allow them to dedicate adequate time to each indigent defendant's case.

Guam's indigent defense system caseload & workload data. Guam's court rules require the primary division and the alternate division to each prepare and submit to the administrator of the courts monthly reports of the number of court appointments they receive.²⁷⁰ From October 1, 2004 through September 30, 2020, the PDSC corporation was also required by its annually renewed contract with the judicial council to submit to the judicial council "a quarterly report of number and type of cases transferred from [the primary division] to [the alternate division] and cases to which [the alternate division] is appointed by the court directly."²⁷¹ The clerks of the supreme court and the superior court are each required by Guam's court rules to maintain, for their respective courts, "a public record of assignments to the [primary division], [the alternate division], the [panel attorneys], and [non-panel attorneys] as well as current statistical data reflecting the proration of appointments."²⁷²

Guam has in place adequate infrastructure and technology to track, report, analyze, and understand the caseloads and workloads of appointed attorneys,²⁷³ but those mechanisms are not being used effectively.

During this evaluation, the primary division, the alternate division, and the judiciary each independently provided extensive information about the cases assigned to indigent defense system attorneys for fiscal years 2018 through 2022 and a portion of fiscal year 2023.²⁷⁴ Despite the extensive caseload data provided, it has significant limitations.

²⁷⁰ GUAM SUPER. CT LOCAL R. MR 1.1.3.(c)(2).

²⁷¹ See, e.g., "Agreement Between the Judicial Council of Guam and the Public Defender Service Corporation" § 7 (October 1, 2019).

²⁷² GUAM SUPER. CT LOCAL R. MR 1.1.3.(b)(4)(D). See also GUAM SUPER. CT LOCAL R. MR 1.1.3.(c)(1).

²⁷³ The primary division and the alternate division both independently use an Abacus case management system, which allows them to generate reports showing, in theory, how many open cases each division attorney has of each type of case at any given moment. The civil division uses a different Clio case management system.

²⁷⁴ The primary division and the alternate division each independently provided, during this evaluation, data showing the number of cases of each type that each division's attorneys had open at the start of each fiscal year, were assigned during each fiscal year, and disposed during each fiscal year.

The judiciary provided, during this evaluation, data showing the number of cases of each type that were assigned to each private attorney (both panel attorneys and non-panel attorneys) during each fiscal year.

The primary division, the alternate division, and the judiciary do not use the same case types in their data. 6AC obtained from each of the data providers, to the extent possible, the definitions they use for each of their case types and then grouped the data reported into broad case types as shown in the following table.²⁷⁵

Case Type	6AC GROUPING		
	Primary Division	Alternate Division	Courts
Adult	Felony	Felony	Felony
	Misdemeanor	Misdemeanor	Misdemeanor
		Veterans Court	
Juvenile	Delinquency	Juvenile	Juvenile
	Drug Court		
	PINS		
	Proceedings		
	Guardianship		Guardian ad Litem
Appeal	Criminal	Appeal	Appeal
Civil	Civil	Civil	
	Domestic		
	Protective Order	Protective Order	
	Probate		
		Mental Health Court	
	Special Proceedings	Special proceedings	
Miscellaneous	Consultation	Consultation (Court ordered)	
		Pro Bono	
		Other	

For adult criminal cases at the trial-court level (the focus of this evaluation), all of the data providers seem to use the same definition of a “case” (or at least very similar ones). Generally, a criminal case is defined by all of the Guam data providers as all charges against a single defendant that arise out of a single incident.²⁷⁶

If an appointed attorney had zero cases at the beginning of a year, then the number of cases newly assigned to that attorney during that year would be the appointed attorney’s caseload. To calculate the appointed attorney’s actual annual caseload, one must add the number of cases that the attorney already had open at

²⁷⁵ For fiscal year 2020, the primary division broke down their case types of felony and misdemeanor into even smaller categories. Felonies were reported in case types of: assault; adult drug court; arson; burglary; DUI; family violence; forgery; mischief/trespass; robbery; terrorizing; theft; home invasion; CSCC; or general jurisdiction. Misdemeanors were reported in case types of: DWI; family violence; or general jurisdiction.

²⁷⁶ It is important to distinguish between the term “case” for purposes of caseloads and the use of criminal docket numbers in the court’s case management system. It seems that each criminal docket number in the court’s case management system may in theory constitute more than one “case” for purposes of caseloads; for example, it appears that two or more codefendants may be jointly charged under a single docket number, but all of the charges against each codefendant would constitute a separate case for purposes of caseloads. On the other hand, it seems that the judiciary may count as a single case, for purposes of caseloads, two or more criminal docket numbers against the same defendant when they are assigned at the same time to an appointed attorney.

the beginning of the year (sometimes referred to as the “carry-over” from previous years). None of Guam’s three data reporters have accurate data about the “carry-over” caseloads of indigent defense system attorneys:

- For appointed private attorneys, the judiciary does not maintain data on the number of appointed cases that each appointed private attorney already had pending at the start of a year, nor the number of appointed cases that each appointed private attorney closed during a year, so it is impossible to know the “carry-over” caseload of appointed private attorneys on Guam. The judiciary also does not collect or maintain data on the number or types of other non-appointed cases that private attorneys handle during a year, so it is impossible to know the true caseloads carried by appointed private attorneys.
- The primary division and the alternate division both maintain data on the number of appointed cases that each division attorney closed during a year, leading to the number of appointed cases that each division attorney already had pending at the start of the following year, but this data cannot be relied upon. The primary division and the alternate division are aware that their caseload data contains a significant number of cases showing as open at the start of a fiscal year that are in fact no longer open cases within their respective divisions. Sometimes the divisions delay changing the status of a case in their case management system. But the “carry-over” caseloads reflected in their data for each fiscal year show a significant number of theoretically open cases that are attributed to attorneys who have not worked within those divisions in many years; the greatest likelihood is that there is nobody within the two divisions who is responsible for maintaining the accuracy of the caseload data.

The primary division, the alternate division, and the judiciary each maintain data on the number of new cases assigned each year. The three data reporters do not consistently use the same methods for when they count a case as being newly opened in their caseload data, nor for when they count a case as closed, nor is there any coordination among the data reporters to reflect when the *same case* is assigned more than once (for example as a result of a conflict causing a case to move from the primary division to the alternate division and then from the alternate division to an appointed private attorney).²⁷⁷ As a result, the number of new cases assigned each year, as reported by each of the data reporters individually and by all of them collectively, may undercount or may overcount the actual number of new cases.

²⁷⁷ The primary division counts as a newly opened case any matter that comes into the division in any fashion. In criminal cases, for example, when a person walks into the primary division office for *only* a consultation (which occurs rarely and usually involves a person who has received a notice to appear but has not yet been formally charged), the primary division counts that as one new case within the “consultation” case type. If the defendant is formally charged, then a new file is “opened” and the consultation file should be “closed,” but it is unclear when or whether the primary division would ever shows a consultation case as closed in their caseload data if the defendant is not charged.

The alternate division does not typically have any consultation cases, and when they do have consultations they do not typically count them as constituting a case. In the six years of caseload data produced during this evaluation, it seems that the alternate division only kept track of consultations during fiscal year 2021 and all consultations opened during that year were also closed during that year.

When a primary division attorney or an alternate division attorney represents a person *only* during a magistrate hearing (referred to locally as a “limited entry”), the divisions do not count that representation as a new case. The division attorneys spend a portion of their available professional hours providing representation to clients during magistrate hearings - this is a part of the divisions’ workload - but this workload is not reflected in the number of cases newly assigned to the division attorneys each year.

The judiciary counts a new case at the moment that it appoints a private attorney (both panel attorneys and non-panel attorneys) to represent a client in that case, so the judiciary’s caseload data accurately reflects the number of cases, by case type, that were assigned to each appointed private attorney during a given year.

The three data providers also maintain data showing the number of those new cases assigned to each attorney. The available reliable data does not show for each attorney the number of cases carried over from the preceding year, so the caseloads of indigent defense system attorneys on Guam during fiscal year 2022 are likely significantly higher for each attorney.

Each indigent defense system attorney on Guam devotes some portion of their available professional hours to performing work that is not reflected in their caseloads. For attorneys in the primary division and the alternate division, this includes for example management responsibilities, providing and/or receiving supervision and training, and appearing on behalf of appointed clients in therapeutic courts and/or at status hearings for appointed clients who are on probation. For the appointed private attorneys, this includes all of the professional hours they spend attending to anything other than their appointed Guam cases. The three data reporters do not maintain data sufficient to determine what portion of the appointed attorneys' professional hours is devoted to their appointed cases and what portion is devoted elsewhere.

FINDING 6: Guam does not have any caseload or workload standards.

Policymakers in many jurisdictions have recognized the need to set their own localized caseload and workload standards. Local standards are able to consider unique demands made on appointed attorneys in the local jurisdiction, such as the travel distance between the court and the local jail, or the prosecution's charging practices. Local caseload standards are also able to address types of cases for which a jurisdiction provides a right to counsel, but that are not contemplated by the national standards.

The PDSC board has not established any caseload or workload limits or standards, either formally or informally.²⁷⁸ The attorneys employed within the PDSC corporation believe that they cannot decline to accept a case, when appointed by a court, based on having an excessive caseload. The PDSC board has, however, frequently *required* the PDSC corporation to cease providing representation in certain *types* of cases because the existing caseloads of the PDSC corporation were higher than would allow its attorneys to provide effective assistance of counsel under the *Guam Rules of Professional Conduct*.²⁷⁹ This makes clear

278 "The PDSC corporation leadership is actively looking for grant funding for the purpose of developing Guam-specific caseload and workload standards.

279 From June 19, 1995 through March 31, 1996, the PDSC board directed the PDSC executive director to "limit the case load of the Public Defender Service Corporation with regard to civil and domestic cases to require that the Corporation only handle domestic and civil cases which involve violence or the threat of violence and need immediate action, and in addition uncontested guardianships" effective June 19, 1995 and continuing "until the case load is substantially reduced to meet the requirements of the Ethics Code, or by the addition of attorneys to help meet the burden." Guam Public Defender Service Corporation Resolution No. PDSC 95-01, *Limiting the Case Load of the Public Defender Service Corporation Temporarily* (adopted June 13, 1995); Guam Public Defender Service Corporation Resolution No. PDSC 96-01, *Lifting the Temporary Limitation of Caseload in Civil and Domestic Cases of the Public Defender Service Corporation* (adopted Mar. 15, 1996).

Effective April 1, 1997, the PDSC board directed the PDSC executive director to "limit the caseload of the Public Defender Service Corporation with regard to civil and domestic cases to require that the Corporation handle only domestic and civil cases which involve violence or the threat of violence and in addition uncontested guardianships primarily for medical insurance purposes" effective April 1, 1997 and continuing "until the caseload is substantially reduced to meet the requirements of the Ethics Code, by the addition of support staff to help meet the burden, or until such time as the Board may direct." Guam Public Defender Service Corporation Resolution No. PDSC 97-01, *Limiting the Caseload of the Public Defender Service Corporation Temporarily* (adopted Mar. 31, 1997).

Effective November 9, 1999, the PDSC board directed the PDSC executive director to "limit the caseload of the Corporation with regard to civil and domestic cases, to require that the Corporation handle only domestic and civil cases which involve violence or the

that the PDSC board believes it has the power to limit the caseloads of the PDSC corporation attorneys, yet the PDSC board has not established any caseload standards, nor has it established any procedures by which the individual attorneys or leadership of the three divisions can bring excessive caseloads to the attention of the board.

Guam's court rules do not establish any caseload or workload limits or standards for the private attorneys who are appointed to represent indigent people. The court rules do expressly allow a panel attorney to declare that they are unavailable to accept an appointment in a specific case "due to scheduling conflicts, workload, or other good cause."²⁸⁰

threat of violence and in addition uncontested guardianships primarily for medical insurance purposes" effective immediately and continuing until the one vacant Attorney I position and the one vacant Attorney II position is filled "or until such time as the Board may direct." Guam Public Defender Service Corporation Resolution No. PDSC 99-06(2), *Limiting the Caseload of the Public Defender Service Corporation Temporarily* (adopted Nov. 9, 1999).

From June 3, 2002 through October 31, 2003, the PDSC board directed the PDSC executive director to "limit the caseload of the Corporation with regard to civil and domestic cases to require that the agency handle only domestic and civil cases which involve violence or the threat of violence, and in addition, uncontested guardianships primarily for medical insurance purposes" effective immediately and continuing until October 31, 2003. Guam Public Defender Service Corporation Resolution No. PDSC 02-03, *Moratorium Involving Civil and Domestic Cases Due to Budgetary Constraints* (adopted June 3, 2003).

From August 28, 2012 through July 28, 2020, the PDSC board imposed "an indefinite continuation of the previous moratorium involving non-criminal cases (with certain exceptions)" and "recogniz[ing] that certain exceptions (i.e., uncontested guardianships, burial of expired bodies, and domestic cases involving violence or the threat of violence) exist" allowed the PDSC corporation to continue to accept "[c]ases of this nature" through December 31, 2012, "whereupon this matter will be reviewed for further action." Guam Public Defender Service Corporation Resolution No. PDSC 13-12, *Continuation of a Moratorium Involving Civil and Domestic Cases* (adopted Aug. 28, 2012); Guam Public Defender Service Corporation Resolution No. PDSC 05-20, *Lifting a Moratorium Involving Civil and Domestic Cases* (adopted July 28, 2020).

280 GUAM SUPER. CT LOCAL R. MR 1.1.3(b) (4)(A). Despite the plain language of the court rule, many indigent defense system attorneys believe that panel attorneys cannot refuse or "pass" cases on the basis of a scheduling conflict or an excessive number of cases.

CHAPTER IX

Independence & Oversight

Perhaps the most noted critique of the defendants in *Powell* was that it lacked independence from governmental interference, specifically from the judge presiding over the case. As noted in *Strickland*, “independence of counsel” is “constitutionally protected,” and “[g]overnment violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense.”²⁸¹ In specific relation to judicial interference, the *Powell* Court stated:

[H]ow can a judge, whose functions are purely judicial, effectively discharge the obligations of counsel for the accused? He can and should see to it that, in the proceedings before the court, the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional.²⁸²

In other words, it is *never* possible for a judge presiding over a case to properly assess the quality of a defense lawyer’s representation, because the judge can never, for example, read the case file, learn the defendant’s stated interests, follow the attorney to the crime scene, or sit in on witness interviews. That is not to say a judge cannot provide sound feedback on an attorney’s in-court performance. The appropriate defender supervisors should actively seek to learn a judge’s opinion on attorney performance. And, in some extreme circumstances, a judge can determine that counsel is ineffective, for example, if the lawyer is sleeping through the proceedings. It is just that a judge’s in-court observations of a defense attorney cannot comprise the totality, or even majority, of supervision.

While *Cronic* and *Powell* focus on independence of counsel from judicial interference, other U.S. Supreme Court decisions extend the independence standard to political interference as well. In the 1979 case of *Ferri v. Ackerman*, the United States Supreme Court stated that “independence” of appointed counsel to act as an adversary is an “indispensable element” of “effective representation.”²⁸³ Two years later, the Court observed in *Polk County v. Dodson* that states have a “constitutional obligation to respect the professional independence of the public defenders whom it engages.”²⁸⁴ Commenting that “a defense lawyer best serves the public not by acting on the State’s behalf or in concert with it, but rather by advancing the undivided interests of the client,” the Court notes in *Polk County* that a “public defender is not amenable to administrative direction in the same sense as other state employees.”²⁸⁵

281 *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

282 *Powell v. Alabama*, 287 U.S. 45, 61 (1932).

283 444 U.S. 193, 204 (1979).

284 454 U.S. 312 (1981).

285 *Polk County v. Dodson*, 454 U.S. 312, 321-22 (1981).

The *Cronic* Court clearly advises that governmental interference that infringes on a lawyer's independence to act in the stated interests of defendants or places the lawyer in a conflict of interest causes a constructive denial of counsel.²⁸⁶

FINDING 7: The judiciary exerts undue influence over the indigent defense system.

To be clear, it is not that the justices and judges of Guam who oversee the indigent defense system are malicious or consciously trying to undermine the basic constitutional right to counsel. Rather, when public defense attorneys are provided through a system overseen by judges, defense attorneys inevitably bring into their calculations what they think they need to do to stay in favor with the judge who appoints and pays them, rather than solely advocating for the stated interests of the defendant as is their ethical duty.

Public defense attorneys in judicially controlled systems understand that their personal compensation along with the resources needed to properly defend an indigent person require the approval of the judges. And so, it does not take a judge to say overtly, for example: "Do not file motions in my courtroom." Fearing loss of income from not pleasing the judge, indigent defense attorneys often take on more cases than they can ethically handle, delay working on cases, and triage their available hours in favor of some clients but to the detriment of others, thereby failing to meet the parameters of ethical representation owed to all clients.

Judicial control of the indigent defense system generally. Guam's chief justice is the chair of the PDSC board that oversees the PDSC corporation, and the chief justice appoints two of the other four members. The superior court presiding judge is the vice-chair of the PDSC board.

One of the associate justices is the chair of the PAP standing committee. The chief justice both appoints the four voting members of the PAP standing committee *and* decides who the panel attorneys are. The supreme court clerk of court is a member of the PAP standing committee.

The judicial council (which is made up completely of justices and judges) controls the sources and expenditures of the "Judicial Client Services Fund" that provides funding for case-related expenses of indigent defendants and compensation of all appointed private attorneys.

All of these provide opportunity for judicial influence over the indigent defense system.

Judicial control of panel and non-panel attorney compensation. From May 2022 through March 2023, the hourly rate paid to appointed private attorneys was \$100 per hour. The hourly rate increased temporarily to \$150 per hour for the period of April through December 2023.²⁸⁷ The court rules also set a cap on the

286 466 U.S. 648 (1984).

287 See GUAM SUPER. CT LOCAL R. MR 1.1.5.(a), as temporarily amended by Promulgation Order No. 06-006-23, *Amendments to Miscellaneous Rule 1.1.5 of the Local Rules of the Superior Court of Guam (Indigent Defense Rule)* (eff. Apr. 1, 2023).

For comparative purposes, Guam statutes enacted in 2010 require the attorney general's office to, for example, review certain government contracts, for which the attorney general's office is authorized to bill at an hourly rate of \$200 per hour. See 5 GUAM CODE ANN. § 30202 (2022). In setting this hourly rate for the attorney general's office billing in 2010, the legislature observed that "in recent

amount of the fee the courts will pay in each type of case (with the maximum fee including any billing for paralegal hours at not more than \$45 per hour and any billing for attorney hours at the applicable \$100/\$150 hourly rate).²⁸⁸ The court temporarily increased the compensation cap in misdemeanor cases from \$3,500 to \$3,600 for the period of April through December 2023.²⁸⁹

In theory, the administrator of the courts can authorize compensation beyond the established fee cap if the appointed attorney can “demonstrate extraordinary circumstances and good cause to justify an exception.”²⁹⁰ Despite this theoretical possibility, no stakeholder could recall any instance in which an appointed private attorney has requested to exceed the compensation cap and that request was approved by the administrator of the courts.

Absent an approved request to exceed the compensation cap, the maximum fees allowed to an appointed private attorney for representing an indigent defendant, and the compensable attorney hours that capped compensation allows based on the applicable hourly rate (assuming no billing for paralegal hours), are:

COMPENSATION AUTHORIZED TO APPOINTED PRIVATE ATTORNEYS BY GUAM'S COURT RULES				
Type of case	\$100 hourly rate, applicable May 1, 2022, through March 31, 2023		\$150 hourly rate, applicable April 1, 2023, through December 31, 2023	
	Maximum fee	Compensable hours under maximum fee	Maximum fee	Compensable hours under maximum fee
Felony carrying potential life imprisonment	\$25,000	250 hours	\$25,000	166.67 hours
First degree felony carrying less than life imprisonment	\$20,000	200 hours	\$20,000	133.33 hours
Second degree felony	\$10,000	100 hours	\$10,000	66.67 hours
Third degree felony	\$7,500	75 hours	\$7,500	50 hours
Misdemeanor	\$3,500	35 hours	\$3,600	24 hours
Habeas corpus proceeding	\$3,150	31.5 hours	\$3,150	21 hours
Juvenile delinquency	\$3,150	31.5 hours	\$3,150	21 hours
Guardian ad litem or juvenile special proceedings	\$7,500	75 hours	\$7,500	50 hours
Appeal	\$10,000	100 hours	\$10,000	66.67 hours

hearings before [the legislature], witnesses have testified that private law firms currently bill their clients from Two Hundred Dollars (\$200) to Three Hundred Fifty Dollars (\$350 per hour.” 5 GUAM CODE ANN. § 30201 (2022).

288 GUAM SUPER. CT LOCAL R. MR 1.1.4.(f), 1.1.5. (eff. May 1, 2022, through Mar. 31, 2023).

289 GUAM SUPER. CT LOCAL R. MR 1.1.5.(a), as temporarily amended by Promulgation Order No. 06-006-23, *Amendments to Miscellaneous Rule 1.1.5 of the Local Rules of the Superior Court of Guam (Indigent Defense Rule)* (eff. Apr. 1, 2023).

290 GUAM SUPER. CT LOCAL R. MR 1.1.5.(a).

When an attorney is paid an hourly rate with a cap on the maximum that the attorney can earn in a case, this creates a conflict of interest between the appointed attorney's own financial interests and the legal interests of the indigent defendants they are appointed to represent. This is because the attorney's financial incentive is to devote exactly the maximum number of compensable hours and not a single moment more to each individual defendant's case. While the courts' hoped, by temporarily increasing the hourly rate, to encourage more private attorneys to voluntarily join the panel attorneys list, this temporary change, without also increasing the cap, has the perverse effect of allowing appointed private attorneys to earn money faster while doing less work on behalf of their appointed clients.

Additionally, judges typically do not provide adequate financial oversight to look for trends on attorney billing which may alert the system to potential issues. For example, the judicial branch provided data about the identity of the private attorneys it appointed to represent indigent defendants in trial-level cases during fiscal years 2018 through 2022 and for October 1, 2022 through September 1, 2023 of fiscal year 2023. The court data shows that the courts appointed 139 individual private attorneys or non-profit law firms, but these attorneys all worked in only 93 different law offices (some solo practitioners, some in firms employing multiple attorneys).

Over the almost identical period during which these appointments were made, only 41 law offices submitted invoices to the judicial branch for appointed representation provided by one or more of their attorney employees. It is impossible to determine why 52 private law offices did not bill the court after their attorney employees were appointed to represent an indigent defendant. The court rules require appointed private attorneys to submit their invoice to the court each month,²⁹¹ and while the judicial branch will pay an appointed private attorney's invoice even if it is submitted late, presumptively most Guam attorneys would intend to comply with the Guam court rules. It is possible that although the court appointed the private attorney, the private attorney nevertheless did not provide any representation services to their appointed client or chose to represent the appointed client *pro bono*. Equally possible is that the court appointed the private attorney but then allowed that private attorney to withdraw and appointed a different private attorney.

As mentioned, when an attorney is paid an hourly rate with a cap on the maximum that the attorney can earn in a case, this creates a conflict of interest between the appointed attorney's own financial interests and the legal interests of the indigent defendants they are appointed to represent. This is because the attorney's financial incentive is to devote exactly the maximum number of compensable hours and not a single moment more to each individual defendant's case. The private attorneys whom the court appoints to represent indigent defendants are free to also represent as many privately paying clients as they choose; by billing for each appointed client's case up to but not beyond the compensation cap, the appointed attorney maximizes their earnings from indigent defense cases while remaining free to devote all of their other available working hours to more lucrative privately paying clients. The danger here is that not only will the

291 GUAM SUPER. CT LOCAL R. MR 1.1.5.

appointed private attorney stop representing an appointed client as soon as it is no longer profitable, but that the attorney will also seek to be appointed to represent as many indigent clients as possible so that they can bill up to the maximum allowed compensation in each case.²⁹²

Judicial control of necessary expenses. Appointed private attorneys must ask the judiciary for case-related expenses – necessary expenses that an attorney incurs in providing effective representation to an individual appointed client – while PDSC corporation attorneys do not, creating a disparity among indigent defendants dependent on the type of system attorney who is appointed to represent them. Necessary case-related expenses can include, for example, postage to communicate with the client and witnesses and the court system, long-distance and collect telephone charges, mileage, and other travel costs to and from court and to conduct investigations, preparation of copies and exhibits, costs incurred in obtaining discovery, and the costs of hiring necessary investigators and experts in the case. No one can say how much is expended for case-related expenses of indigent adult criminal defendants on Guam during any fiscal year, nor does anyone know whether all of the necessary case-related expenses are provided.

Guam's court rules provide that a court “may authorize” any attorney who is appointed to represent an indigent defendant “to retain the services of investigators, experts and interpreters upon a showing that such services are necessary for adequate representation of the person.”²⁹³ To obtain authorization from the court, the appointed attorney must apply for the court's approval before retaining the services, and payment for services approved by the court is made from one line item or another of the judicial branch's “Judicial Client Services Fund.” To whatever extent case-related services are provided for indigent defendants on Guam, this is the method by which they are obtained *except* investigators for the cases of defendants represented by primary division attorneys or alternate division attorneys.

The primary division attorneys and the alternate division attorneys do not have to seek and obtain court authorization for investigative services on behalf of their appointed clients, and the only limits on the amount of investigation available is simply the man-hours that the staff investigators can provide. The primary division has six full-time investigators on staff, who provide whatever investigative services are needed in the cases of defendants represented by primary division attorneys. The compensation of these primary division investigators, as well as any expenses they incur in connection with investigating, is paid out of the PDSC corporation's legislative appropriation funding. Similarly, the alternate division has two investigators on staff, who provide the investigative services needed in the cases of defendants represented by alternate division attorneys, and the compensation and expenses of the alternate division investigators are paid out of the alternate division's legislative appropriation funding.

292 The judicial branch's ledgers show the word “CAP” in the description for each invoice where the appointed private attorney has reached the maximum compensation authorized by the court rules. Over the six years of reported payments, one of the 41 law firms that submitted invoices to the court was paid the maximum allowable compensation 123 times, for a total of \$552,886.60 *before* counting the attorney's additional compensation where they did not bill the maximum allowed (the next highest ranking law firm was paid the maximum allowable compensation only 26 times, and 16 of the 41 law firms never submitted an invoice that reached the maximum compensation allowed).

293 GUAM SUPER. CT LOCAL R. MR 1.1.4.(a).

The only method by which an appointed private attorney can obtain investigative services for their appointed clients (other than paying for them out of their own pocket) is by obtaining the advance approval of the court, and the maximum total amount that the court will authorize for all case-related services in a single case is \$1,500 (increased temporarily to \$2,000 for the period of April 1 through December 31, 2023).²⁹⁴ In other words, investigative services for an indigent defendant represented by an appointed private attorney, *along with* expert services and interpreter services, cannot exceed \$1,500 unless the attorney can “demonstrate extraordinary circumstances and good cause” to obtain greater funding from the court.²⁹⁵ Stakeholders cannot recall a single instance in which a court has authorized the expenditure of more than \$1,500 for case-related services on behalf of any indigent defendant. Indigent defendants represented by a primary division attorney, or an alternate division attorney have the full \$1,500 per case available, with court approval, for experts and interpreters.

Guam’s statutes and court rules do not expressly address how an appointed private attorney can be reimbursed for out-of-pocket case-related expenses that the attorney incurs on behalf of appointed clients for necessary expenses such as postage, toll telephone calls, copies, mileage, and parking. Presumably the courts will authorize the attorney to be reimbursed for these expenses, so long as the attorney’s total invoice for fees & expenses does not exceed the maximum allowed compensation for a given case under the court rules and so long as the attorney does not incur more than \$250 in total expenses without first obtaining court authorization.²⁹⁶ Of concern is that appointed private attorneys may forego incurring necessary case-related expenses on behalf of their appointed clients, out of concern that they will not be reimbursed for those expenditures.

²⁹⁴ See GUAM SUPER. CT LOCAL R. MR 1.1.4.(c), as temporarily amended by Promulgation Order No. 06-006-23, *Amendments to Miscellaneous Rule 1.1.5 of the Local Rules of the Superior Court of Guam (Indigent Defense Rule)* (eff. Apr. 1, 2023).

²⁹⁵ GUAM SUPER. CT LOCAL R. MR 1.1.4.(c).

²⁹⁶ See GUAM SUPER. CT LOCAL R. MR 1.1.4.(e) and 1.1.5.

CHAPTER X

Recommendations

Guam's justice system is relatively young, and its indigent defense system is even younger. Members of the judiciary expressed the position that judicial oversight of indigent defense services was necessary in the earliest stages of growth to ensure its proper development and evolution. Nonetheless, Guam must ensure the independence of right to counsel services.

There is no uniform “cookie-cutter” indigent defense services delivery model that jurisdictions *must* apply. The question for Guam's policymakers is how best to provide effective assistance of counsel to indigent people, as required by the Sixth Amendment, under Guam's unique circumstances. The Sixth Amendment Center does not presume that the recommendations below are the *only* way to restructure Guam's indigent defense system, and the examples of statutory language from various states are provided simply as starting points for legislative consideration.

RECOMMENDATION 1: Guam should vest the authority to oversee all indigent legal services in an independent right to counsel commission.

National standards, as compiled in the *ABA Ten Principles of a Public Defense Delivery System*, agree that the best way to protect defense counsel independence is by establishing an independent public defense commission.²⁹⁷ The National Study Commission on Defense Services' *Guidelines for Legal Defense Systems in the United States* explain:²⁹⁸

A special Defender Commission should be established for every defender system, whether public or private.

The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented.

Commission members should be selected under the following criteria:

(a) The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director.

²⁹⁷ AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 1 (2023) (“To safeguard independence and promote effective and competent representation, a nonpartisan board or commission should oversee the Public Defense Provider.”);

²⁹⁸ NATIONAL STUDY COMM'N ON DEF. SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.10 (1976).

(b) The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics.

(c) No single branch of government should have a majority of votes on the Commission.

(d) Organizations concerned with the problems of the client community should be represented on the Commission.

(e) A majority of the Commission should consist of practicing attorneys.

(f) The Commission should not include judges, prosecutors, or law enforcement officials.

Members of the Commission should serve staggered terms in order to ensure continuity and avoid upheaval.

Statutory language establishing the commission should ensure its independence. For example, Connecticut's statute states that its commission is an "autonomous body within the judicial department for fiscal and budgetary purposes only."²⁹⁹

Guam should give an equal number of member appointments to the executive, legislative, and judicial branches of government, so that no single branch of government can usurp power over or exert outsized influence over the delivery of indigent defense services.

In constructing its independent commission, Guam should follow the lead of the increasing number of jurisdictions that prohibit voting members of the commission from being a sitting judge, a current prosecuting attorney, a current law enforcement employee, or a person currently paid to provide public defense services (or any employee of any person in those roles).³⁰⁰ For example, New Mexico's commission statute states:³⁰¹

A person appointed to the commission shall have: (1) significant experience in the legal defense of criminal or juvenile justice cases; or (2) demonstrated a commitment to quality indigent defense representation or to working with and advocating for the population served by the department.

The following persons shall not be appointed to and shall not serve on the commission: (1) current prosecutors, law enforcement officials or employees of prosecutors or law enforcement officials; (2) current public defenders or other employees of the department; (3) current judges, judicial officials or employees of judges or judicial officials; (4) current elected officials or employees of elected officials; or (5) persons who currently contract with or receive funding from the department or employees of such persons.

299 CONN. GEN. STAT. § 51-289(l) (2023).

300 The NSC's *Guidelines* direct that an indigent defense system "[c]ommission should not include judges, prosecutors, or law enforcement officials." NATIONAL STUDY COMM'N ON DEF. SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.10 (1976). These prohibitions are only for *sitting* judges and prosecutors; states often find former judges and law enforcement officials to make very good commission members.

LA. REV. STAT. § 15:146(B)(2) (2020).

301 N.M. STAT. ANN. § 31-15-2.2 (2023).

These prohibitions are only on *current* judges, defenders, and prosecutors. Jurisdictions often find former judges, former defenders, and former law enforcement officials to make good commission members.

Many jurisdictions also include one or more voices on their commission from communities affected by the indigent defense function and ensure that the commission reflects the demographic makeup of the community. In addition, Guam can also consider the value that commission members of varying expertise and background can bring, and so might consider sociologists, psychologists, political scientists, historians, and/or accountants.

National standards do not prohibit a commission from having members who work or reside outside of the jurisdiction. Guam can consider allowing commission members to be from other off-island jurisdictions that are subject to the Sixth Amendment.

RECOMMENDATION 2: Guam should empower the right to counsel commission to promulgate and enforce standards applicable to all indigent defense system attorneys.

The right to counsel commission must be statutorily required to promulgate and enforce binding standards applicable to all indigent defense system attorneys. For example, Michigan statutorily requires its commission to promulgate and enforce mandatory statewide standards for, among other things: attorney qualifications; attorney performance; attorney supervision; time sufficiency; continuity of services whereby the same attorney provides representation from appointment through disposition; client communications; data collection; and indigency determination.³⁰²

Specifically, Michigan's statutory language requires its commission to implement minimum standards, rules, and procedures that adhere to the following principles:³⁰³

- Defense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client.
- Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation.³⁰⁴

³⁰² MICH. COMP. LAWS § 780.991 (2023).

³⁰³ MICH. COMP. LAWS § 780.991(2)(a)-(f) (2023).

³⁰⁴ There are no national standards that require indigent defense providers to keep contemporaneous time records. However, it is a practice that 6AC strongly encourages. The benefit of time-tracking is that it allows indigent defense systems to objectively demonstrate when they are at capacity, to set binding caseload standards, and to establish protocols for withdrawing from cases. By continually tracking time, indigent defense systems can change caseload standards as new events require it. For example, if a jail changes practices that affect how long it takes for lawyers to meet with clients, tracking time allows the indigent defense system to show the impact of that decision on the amount of time that must be dedicated to the average case, and potentially to lower a caseload standard. Time-tracking can also account for other factors that may increase or decrease the amount of work and effort attorneys must spend on their appointed cases, including but not limited to: the complexity of cases; the geographical size of the jurisdiction; appropriate access to non-legal support staff, such as investigators, social workers, mitigation specialists, paralegals, etc.; and the prevalence of mental health, developmental disabilities, and/or substance addiction issues in the clients.

- Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.
- The same defense counsel continuously represents and personally appears at every court appearance throughout the pendency of the case. However, indigent criminal defense systems may exempt ministerial, nonsubstantive tasks, and hearings from this prescription.
- Defense counsel is required to attend continuing legal education relevant to counsel's indigent defense clients.
- Defense counsel is systematically reviewed at the local level for efficiency and for effective representation according to MIDC standards.

RECOMMENDATION 3: Guam should empower the right to counsel commission to collect, analyze, and report on data needed to ensure effective representation.

National standards call for the right to counsel commission to “collect reliable data on public defense, regularly review such data, and implement necessary improvements” to “ensure proper funding and compliance” with the requirements of the right to counsel.³⁰⁵ The commission should collect and evaluate on an on-going basis all information necessary to ensure that a sufficient number of qualified attorneys are available to be appointed and that adequate resources are available (overhead including support staff, training, supervision, and technology; case-related needs including social workers, investigators, and experts; and fair attorney compensation) to ensure effective assistance of counsel can be provided to each person who is entitled to public counsel under the *Organic Act*, the Sixth Amendment, and Guam law.

Some of this data necessarily comes from other components of the justice system, including law enforcement, prosecutors, and the courts. The commission should coordinate with all justice components to gather information without imposing duplicative, undue, or onerous administrative or fiscal burdens and to do so in a way that protects the privacy and attorney-client privilege of individuals and the privileged work product of prosecutors and defense attorneys.

³⁰⁵ AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 4 (2023) (data should be collected on caseloads and workloads; major case events; use of investigators, experts, social workers, and support services; case outcomes; monetary expenditures; and demographic data on employees and clients).

RECOMMENDATION 4: Guam should authorize and fund the right to counsel commission to create an office of indigent legal services to carry out the day-to-day duties of the commission.

As directed by national standards, the commission should have statutory authority to select a senior attorney to serve as executive director of the office of indigent legal services, chosen “on the basis of a non-partisan, merit procedure which ensures the selection of a person with the best available administrative and legal talent, regardless of political party affiliation, contributions, or other irrelevant criteria.”³⁰⁶ The executive director should be hired by the commission for a fixed term that is subject to renewal and should not be removed from office absent good cause shown through due process.³⁰⁷

At minimum, Guam’s office of indigent legal services should reflect the following staffing levels:

- one executive director: primarily the “outward looking” person to interact with the rest of Guam’s government & communities;
- one deputy director: primarily the “inward looking” person to interact with the administration of and heads of the service providers;
- one training/supervision director: to provide and oversee system-wide training and to assess the system attorneys;
- one finance director: to receive, analyze, and oversee all system funding;
- one IT director: to receive, analyze, and oversee all system data (including caseloads, workloads, etc.); and
- and necessary support staff.

The commission should be authorized to decide the best indigent defense delivery systems for Guam, and funding scheme, with the office of indigent legal services administering the system. Importantly, the office of indigent defense legal services should not provide direct representation itself. So, for example, they could continue to have the PDSC corporation with its three existing divisions, and then establish a managed assigned counsel system. Or they might choose to separate the PDSC corporation into three entirely separate entities and add a managed assigned counsel entity.

The office of indigent legal services executive director should hire lawyers to run the day-to-day operations of whatever divisions or separate entities are ultimately created. This includes hiring a manager of the panel attorney system that must be out from under the judiciary. Subsequently, the new managed assigned counsel system must be given the resources to hire the requisite financial staff needed to monitor, approve and pay private attorney vouchers.

³⁰⁶ NATIONAL STUDY COMM’N ON DEF. SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.12 (1976).

³⁰⁷ NATIONAL STUDY COMM’N ON DEF. SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.12 (1976).





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Telo T. Taitague
CHAIRWOMAN

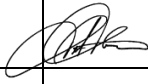
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COMMITTEE VOTE SHEET

Bill No. 97-38 (LS) As Amended- Introduced by Frank F. Blas, Jr., Telo T. Taitague- "AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE "PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025."

COMMITTEE MEMBERS	SIGNATURE/ DATE SIGN	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
Senator Telo T. Taitague Chairperson	 6.20.25	×				
Senator Darrel Christopher Barnett Vice Chairperson	E-Vote 6.20.25			×		
Senator Sabina F. Perez Member	E-Vote 6.20.25			×		
Senator Therese M. Terlaje Member	E-Vote 6.20.25			×		
Senator Shelly V. Calvo Member						
Speaker Frank F. Blas, Jr. Member	E-Vote 6.20.25	×				



Senator Telo Taitague <senatortelot@gmail.com>

REQUEST FOR E-VOTE: COMMITTEE REPORT ON BILL NO. 97-38 (LS)- AS AMENDED5 messages

Senator Telo Taitague <senatortelot@gmail.com>

20 June 2025 at 15:53

To: Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>, Senator Therese Terlaje <senatorterlajeguam@gmail.com>, "Speaker Frank Blas, Jr." <speakerblas@guamlegislature.gov>, Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, Office of Senator Sabina Perez <office.senatorperez@guamlegislature.gov>

Cc: Rowena Fejeran <senatortelot.rowena@gmail.com>, senatortelot.charissa@gmail.com, senatortelot.alana@gmail.com, Isah Peredo <senatortelot.isah@gmail.com>

Håfa Adai Committee Members,

Please see the attached Committee Report on Bill No. 97-38 (LS) As Amended- Introduced by Frank F. Blas, Jr. , Telo T. Taitague- "AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE "PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025."

Please indicate your preferred action, based on the following options:

- _____ TO DO PASS;
- _____ TO NOT PASS;
- _____ TO REPORT OUT ONLY;
- _____ TO ABSTAIN;
- _____ TO PLACE IN INACTIVE FILE.

Please submit your response **ASAP**. Your responses will be logged into the Committee Vote Sheet for **Bill No. 97-38 (LS), As Amended**. Should you have any questions, please do not hesitate to contact our office.

Si Yu'os Ma'åse,

Create a Great Day!

Senator Telo T. Taitague

38th Guam Legislature

Chairperson

Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement

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Committee Report- Bill No. 97-38 (LS) As Amended_Routing.pdf

10404K

Speaker Frank Blas Jr. <speakerblas@guamlegislature.gov>

20 June 2025 at 16:00

To: Senator Telo Taitague <senatortelot@gmail.com>

Cc: Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>, Senator Therese Terlaje <senatorterlajeguam@gmail.com>, Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, Office of Senator Sabina Perez <office.senatorperez@guamlegislature.gov>, Rowena Fejeran <senatortelot.rowena@gmail.com>, senatortelot.charissa@gmail.com, senatortelot.alana@gmail.com, Isah Peredo <senatortelot.isah@gmail.com>

To Do Pass



Speaker, Frank F. Blas, Jr.

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[Quoted text hidden]

Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>

20 June 2025 at 16:00

To: Senator Telo Taitague <senatortelot@gmail.com>

Cc: Senator Therese Terlaje <senatorterlajeguam@gmail.com>, "Speaker Frank Blas, Jr." <speakerblas@guamlegislature.gov>, Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, Office of Senator Sabina Perez <office.senatorperez@guamlegislature.gov>, Rowena Fejeran

<senatortelot.rowena@gmail.com>, senatortelot.charissa@gmail.com, senatortelot.alana@gmail.com, Isah Peredo <senatortelot.isah@gmail.com>

To report out only. Have a safe weekend!



The Office of Senator Chris Barnett

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On Fri, Jun 20, 2025 at 3:54 PM Senator Telo Taitague <senatortelot@gmail.com> wrote:

[Quoted text hidden]

Office Senator Perez <office.senatorperez@guamlegislature.gov>

20 June 2025 at 16:50

To: Senator Telo Taitague <senatortelot@gmail.com>

Cc: Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>, Senator Therese Terlaje <senatortelajeguam@gmail.com>, "Speaker Frank Blas, Jr." <speakerblas@guamlegislature.gov>, Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, Rowena Fejeran <senatortelot.rowena@gmail.com>, senatortelot.charissa@gmail.com, senatortelot.alana@gmail.com, Isah Peredo <senatortelot.isah@gmail.com>

Hafa Adai,

To report out only.

Si yu'os ma'ase.

On Fri, Jun 20, 2025 at 3:54 PM Senator Telo Taitague <senatortelot@gmail.com> wrote:

[Quoted text hidden]

Senator Therese M. Terlaje <senatortelajeguam@gmail.com>

20 June 2025 at 17:14

To: Senator Telo Taitague <senatortelot@gmail.com>

Cc: Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>, "Speaker Frank Blas, Jr." <speakerblas@guamlegislature.gov>, Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, Office of Senator Sabina Perez <office.senatorperez@guamlegislature.gov>, Rowena Fejeran <senatortelot.rowena@gmail.com>, senatortelot.charissa@gmail.com, senatortelot.alana@gmail.com, Isah Peredo <senatortelot.isah@gmail.com>

Håfa Adai,

To Report Out Only.

Si Yu'os Ma'åse'

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On Fri, Jun 20, 2025 at 3:54 PM Senator Telo Taitague <senatortelot@gmail.com> wrote:

[Quoted text hidden]



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Telo T. Taitague
CHAIRWOMAN

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COMMITTEE REPORT DIGEST

I. OVERVIEW

Bill No. 97-38 (LS) was introduced on Wednesday, April 9, 2025, by Speaker Frank Blas Jr. **Bill No. 97-38 (LS)** was referred by the Committee on Rules to the Committee on *Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement*, on Friday, April 11, 2025. The Committee convened a public hearing on **Thursday, April 29, 2025, at 2:00 p.m.** in the Guam Congress Building, Public Hearing Room.

Public Notice Requirement:

In Compliance with Open Government Law, a five (5) day public notice of this hearing was published on Tuesday, April 22, 2025, and a forty-eight (48) hour notice was published on Friday, April 25, 2025, on KUAM-TV and on the Guam Public Notice Website. Notices were also sent to all senators, and all main media broadcasting outlets via email on the same dates.

Senators Present:

Senator Telo Taitague, Chairperson
Speaker Frank Blas Jr.
Vice Speaker V. Anthony Ada
Senator Shawn Gumataotao
Senator Shelly Calvo
Senator Therese M. Terlaje

Appearing Before the Senate Panel:

Robert J. Torres, Chief Justice, Judiciary of Guam
Aditi Goel, Deputy Director, Six Amendment Center
Stephen Hattori, Executive Director, Public Defender Service Corporation
Anamaria Gayle, Managing Attorney, Alternative Public Defender
Carol Hinkle-Sanchez, Managing Attorney, Civil Law Center
Diane Gudmalin, Finance Administrator, Judiciary of Guam

Written Testimony Submitted:

Robert J. Torres, Chief Justice, Judiciary of Guam

Associate Justice Philip Carbullido, Judiciary of Guam

Stephen Hattori, Executive Director, Public Defender Service Corporation

II. SUMMARY OF TESTIMONY & DISCUSSION

The Public Hearing was Called-to-Order at 2:05 pm. Bill No. 97-38 (LS) was the first item on the agenda.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: *Bueñas yan hãfa adai. Guahu si Senadora* Telo Taitague. This Public Hearing is called to order and the time now is 2:05 p.m. Good morning to you all and those who are watching from home and to those who are appearing before us, welcome to the people's house. For the record, today is Tuesday, April 29th, 2025. This hearing is conducted by myself, Senator Telo Taitague, Chairwoman of the Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Election, and Retirement. To comply with the Open Government law, notices of this hearing were disseminated to all Senators and the public at large via email and published on KUAM on Tuesday, April 22nd, 2025. And the second notice, February 25th, 2025. Notice of the hearing was also available on the Guam legislative website and the Guam, Government of Guam Public Portal.

I would like to welcome my colleagues who are here to join me today; the Speaker of our house Speaker Frank Blas, Senator Shelley Calvo, Senator Shawn Gumataotao, and Vice Speaker Tony Ada. Thank you, colleagues for joining us. We have the following bills on the agenda today. However, because we have somebody online to testify on one of the bills and of course the timeline in the mainland is very difficult for them, I ask that you be patient if your bill was supposed to be heard first. We're going to be hearing Bill 97-38(LS) first. Then we'll go to Bill 33-38(COR), 88-38 (COR), and Bill No. 75-38 (COR).

Before we discuss these bills, I want to set some rules of engagement for everyone to follow during these proceedings. I respectfully ask that we conduct ourselves professionally and respect each other's opinion.

- When you speak, please make sure you speak into the microphone directly and state your name and title for the record, for housekeeping purposes.
- I ask that the panel members remain in the room for questions for any additional testimony as may be desired by the senators present at this proceeding. However, if you



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need to leave, please let me know and then we'll be able to ask your questions up front and then you can leave.

- Questions and testimony shall be confined to the substance of nature of the bill on the agenda. Individuals who do not comply with these rules will be removed from the room and prohibited from further participation.
- For my colleagues, copies of the legislation and documents received ahead of this hearing can be accessed through the Google Drive link that was emailed to all my colleagues. And for the public, you can find the legislation on the Guam website at guamlegislature.gov.

So, the first bill on the agenda is Bill 97-38 (LS) introduced by Speaker Frank Blas Jr.; AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE "GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025."

And before I turn this over to the Speaker, I'd like to recognize my Vice Chair Senator Therese Terlaje. Thank you for joining us. Speaker, you are now recognized.

SPEAKER FRANK BLAS JR.: Thank you very much, Madam Chair, and thank you for all that are here. Chief Justice Robert Torres, thank you for being here, as well as other members that are going to be testifying on this bill. Bill 97-38 (LS) is actually a bill that have we worked with both the Chief Justice and the Judiciary as well as with the Public Defender Service Corporation in being able to very basically ensure that our indigent defense basically conforms to what is actually law, and constitutionally mandated to be able to provide. And what this does basically, for lack of a better term, separates the Public Defender Service Corporation into a separate entity that will be able to manage its affairs. I think that I don't want to go into any more detail and allow those that are going to be testifying to provide the meat to the bill that is being proffered, that's being heard here today. I look forward to your testimony as well as your input and insight on how to be able to make, to ensure that this bill basically provides or satisfies the intent and the need, to be able to ensure that this service continues to be provided

to all individuals as provided by not just the Constitution of the United States, but our Organic Act of Guam as well. So, with that, thank you very much, Madam Chair, and I look forward to the testimony.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Thank you, Speaker Blas. At this time, I'd like to recognize our Chief Justice Robert Torres, who is here with us. Please state your name and title and everything. And you will be going first, sir. Please.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Thank you, Madam Chair. *Håfa adai* members of the legislature that are here. Vice Speaker Ada, Senator Calvo, Senator Gumataotao, Speaker Blas, former Speaker Terlaje or also our former Chair. Thank you for the opportunity to provide testimony on Bill 97- 38 introduced by the Speaker and Senator Telo Taitague. I'm Chief Justice Robert Torres and I'll be talking about the bill that seeks to reorganize the Guam Public Defender Service Corporation to provide effective legal aid and services to persons who are entitled to council under the Organic Act of Guam, the laws of Guam and the US Constitution and cited as *the Guam Public Defender Service Corporation Act of 2025*.

The Judiciary wholeheartedly supports this legislation and the principle it advances for our justice system. As the Organic Act and the Sixth Amendment of the United States Constitution make clear, when a person's liberty is at stake, the government is required to provide access to legal representation even if that person cannot afford it. That responsibility has been fulfilled through the Public Defender Service Corporation, the Alternate Public Defender Service Corporation, and the Judiciary has helped fulfill that responsibility through the administration of the Private Attorney Panel. That panel serves as Guam's third tier of representation, stepping in when the Public Defender or Alternate Public Defender cannot, due to conflicts. It has been a critical safety net. But while the Judiciary has worked to fill the gaps with care and integrity, we also recognize that the public trust is strengthened when the defense function operates independently, free from influence or overreach of any one branch of government. Bill 97-38 moves us in that direction. It incorporates the recommendations from the Sixth Amendment's Center's March 2024 Report and lays the groundwork for a more cohesive, accountable, and independent structure, one that aligns with national best practices.

In addition to our full support for the bill's goals, we respectfully offer a few recommendations for your consideration based on the input provided by the Judiciary's Private Attorney Panel in a letter sent by Associate Justice F. Phillip Carbullido. Their feedback has been important and has been incorporated into the Judiciary's official testimony. While the bill includes appeals, *guardian ad litem* appointments, juvenile cases, we will also work with the Committee on Justice to provide necessary technical edits during the markup process. That's a very valuable process and we will contribute to that with some technical edits. But we believe these recommendations that I'll discuss now will address much of the anticipated impact while



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keeping the operational decisions with the PDSC and its new governing board that will be consistent with the Sixth Amendment's recommendation.

To ensure a smooth transition, we're recommending that the new Board of Trustees of the Guam Public Defender Service Corporation be constituted, and that its policies and procedures be adopted at least 90 days before the effective date of October the 1st. So, I hope that the legislature will act quickly, perhaps in the May session, to address the Bill 97-38, which would give the board enough time before the effective date of October 1st to be constituted and work through the transition period.

It's not often that you hear people supporting eradication of their positions, but essentially, I've served as the Chairman of the Public Defender Service Corporation for nine years. Vice Ada's spouse was also a member of the Public Service Defender Corporation Board of Trustees during my last tenure as Chief Justice. But it's important that an independent Board of Trustees be constituted for the Public Defender. And having the Board in place with this transitional period will help avoid disruptions in service and provide the Corporation time to operationalize its responsibility. The Judiciary will remain committed to assisting the Public Defender Corporation during this transition period as well to help ensure continuity of services.

We also wanted to clarify the prohibition on flat fees. The bill's intent is to prohibit flat fees, which are widely criticized by the Sixth Amendment Center and the American Bar Association for discouraging meaningful representation, and in fact incentivizing early plea deals. However, the current language in § 11109 (j) of the bill may inadvertently be interpreted by some who might not recognize the difference between a flat fee and a fixed fee as prohibiting a comp form of compensation that exists currently which is to cap a fee in a particular case.

This does not intend to prohibit capped fees. And to remove any ambiguity, we're respectfully recommending that we just add language at the end of the section that says that *the provision shall not be construed to prohibit the use of reasonable case type-based compensation caps*. A capped fee is different from a flat fee. And this just makes it clear so no one can second guess what that provision means. And finally, we're making, we want to recommend amending Section 45.40 of Chapter 45, Title 8, the last section of the bill, to make it clear that the Board of Trustees will handle all appointments when the divisions of the Guam Public Defender cannot accept a case due to a conflict of interest.

In their review of other jurisdictions, the Sixth Amendment Center recommended that this Fourth Tier, if it becomes necessary, remember we have the Public Defender, the APD, the Private Attorney Panel division, and then this Fourth Division, which is just now random appointments to members of the Guam Bar Association. But if that Fourth Tier becomes necessary, the responsibility should be delegated to this independent commission to ensure uniform independent oversight and the administration of the public defense services. So, it makes it clear that the Board of Trustees will be responsible for making those appointments and that they'll receive reasonable compensation, and the expenses to be paid by the Guam Public Defender Service Corporation subject to appropriation.

The idea is that the Board of Trustees will be able to decide how they will handle that Fourth Tier. They may determine to enter into contractual agreements with members of the Guam Bar to avoid appointments through everyone in the list. They may have specific cases, if they're felony cases, be appointed to a certain attorney who they have an agreement with to handle experienced and difficult felony cases. They may have misdemeanor attorneys. So, it may depend on the type of case. But ultimately, it'll be up to the Board of Trustees and how they have set up their processes for appointment of that Fourth Tier. In sum, the Judiciary views Bill 97-38 as a meaningful investment in Guam's legal system and the people it serves.

There has been talk for many years about having an independent and Indigent Defense organization free from influence of any branch of government and this is definitely a step in the right direction. We commend the Speaker and Senator Taitague for advancing this important reform. We respectfully seek the legislatures' full support and the Judiciary stands ready to assist in the bill's implementation. *Dangkulu na si Yu'us ma'ase'*. Thank you very much.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Thank you, Chief Justice. At this time, we'd like to switch over to Zoom and invite the next ...Okay, there she is. We're doing okay. Aditi Goel from the Sixth Amendment Center, you are now recognized. Please state your name for the record and title and what agency you're with. Thank you.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: My neighbor from 10 Hills in Massachusetts when I lived there. Hi Aditi.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Can you hear me? Okay.

ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): Hello?

SENATOR TELO T. TAITAGUE, CHAIRPERSON: There. Can you hear me? Testing, mic test one two. We're good.



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ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): It's okay. I can kind of hear you. kind of it breaks in and out but I will do the best I can here.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Okay, we can hear you barely too. Maybe we can turn up the volume here at home but if you can also turn up your volume as well because you're coming in kind of you know soft. But we'll try to be as quiet as possible, so we can hear you. So please, you are now recognized.

ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): Good afternoon. Thank you for the opportunity to address this committee. My name is Aditi Goel and I am the Deputy Director of the Six Amendment Center, also known as 6AC. 6AC is a national nonpartisan, nonprofit organization that provides expert technical assistance to governments on meeting the Sixth Amendment Constitutional right to counsel. I have been in public defense for nearly 15 years. Prior to joining 6AC, I was a Public Defender in Massachusetts. I'm a clinical instructor at Harvard Law School and investigator at the Public Defender service for the District of Columbia. 6AC was founded in 2013 on three very simple principles. The first is we only really go where we are invited. We don't want to write a report that no one in the government requested.

The second is we never get involved in litigation such as class actions, individual cases or amicus briefs. We trust the legislative process and we believe that policymakers make good decisions when they are armed with good information. And the third and final principle that we operate under is we are truly nonpartisan. So, our board and our funding represent all ends of the political spectrum because every jurisdiction regardless of politics must ensure that the sixth amendment right to counsel is being met.

In March 2024 at the request of the Public Defender Service Corporation, 6AC published a report with findings and recommendations after evaluating public defense services on Guam. We use Sixth Amendment case law and national standards such as the American Bar Association 10 principles of a public defense delivery system as the uniform baseline measure for evaluating public defense services. 6AC's 15-month long evaluation began in November 2022 and it involved four basic components. The first is legal research and analysis. The second is data collection and analysis of extensive amounts of information that was provided by the Supreme Court of Guam, the Superior Court of Guam, the Judicial Council and PDSC. The third is court observations of 167 proceedings in front of seven judges and magistrates over 10

days. And finally, a total of 82 interviews of a broad section of stakeholders, including individual judges, magistrates, court clerks, former prosecutors, corrections officers, probation officials, PDSC staff, and private attorneys.

I cannot emphasize enough that we were impressed by the many people and the stakeholders we spoke with about their passion, their commitment, and their dedication to ensuring that every indigent person on Guam receives effective public defense services. We remain impressed by the very positive and constructive response by the Guam Judiciary, elected officials, and stakeholders in taking this report seriously. And we truly congratulate you on having come to this point. This legislation that is before this committee addresses all of 6AC's recommendations from the report, to ensure that an independent board with equal appointments from all three branches of government has full oversight authority over all public defense services on Guam as mandated by the U.S. Constitution and the Organic Act Guam. I'm happy to take questions. Thank you.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Thank you so much. At this time, I would like to recognize the Executive Director of the Public Defender Service Corporation. I know I have you down, Annie, as someone who's going to speak, but we'll go ahead and recognize your Executive Director first and then he can pass the patent to these two beautiful ladies and please recognize who they are if they're not going to speak. Executive Director, so, you are now recognized, sir.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): Thank you Chairperson Taitague. Before I begin, I really want to thank you and the Speaker for introducing this bill. It's historic for our office and also for the indigent clients of Guam. And we hope that we also appreciate the other senators for showing up to hear this important measure.

I am Stephen, the current Executive Director of the Guam Public Defender Service Corporation. PDSC currently consists of three divisions. PDSC criminal, the Alternate Public Defender, and Annie Gayle, the Managing Attorney is present and the Civil Law Center, Carol Hinkle-Sanchez is present here as well. Collectively we represent indigent residents, basically your constituents in both criminal and civil matters. And we are celebrating our 50th anniversary of PDSC this year. On July 10, 1975, we were created. You guys will be invited to our conference. The defense system is currently under the development and supervision of the Judiciary as it has been since its inception. The Judiciary has sole responsibility for guarding the Sixth Amendment Constitutional right to counsel. Our current board is chaired by the Chief Justice of Guam. Our vice chair is the presiding judge of the superior court.

However, all public officials, you know, whether you're in the Judicial, the Legislative, or the Executive Branch, take an oath to uphold the Constitution. So, we're hoping that each of the



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branches now share in this responsibility of protecting the right to counsel for the people of Guam. We've evolved to the point where this office should be co-equally protected and supervised by each of the three branches. The draft bill creates a Board giving each branch equal responsibility over the protection and development of this important constitutional and Organic Act right. It will also permit the Judiciary to return to being a neutral arbitrator in our adversarial system of justice.

I submit this testimony in strong support of Bill No. 97-38, *the Guam Public Defender Service Corporation Act of 2025*. This bill represents a critical and long overdue restructuring of Guam's indigent defense system to align with both the constitutional mandate under the Sixth Amendment and the best practice standards outlined in the American Bar Association's revised 10 principles of a Public Defense Delivery System. This bill is a product of the Sixth Amendment Center comprehensive study on Guam's indigent defense system. As you've learned, the Sixth Amendment Center provides technical assistance to establish and implement public defense systems that meet constitutional muster while promoting public safety and fiscal responsibility.

Now, the Sixth Amendment Center's evaluation came up with basically several challenges that were identified. One was a lack of structural independence. Another was funding that was not based on reliable or unstable sources such as court fines and fees. These do not align with service demand or constitutional requirements.

So, the Public Defender Service Corporation and Alternate Public Defenders, they've been fully funded by the general fund for years and we believe they are sufficiently funded. The legislature has done a great job in protecting the right to counsel on behalf of those two offices. We believe it's time for the Legislature to also assume responsibility of fully funding and protecting the constitutional rights for those who fall under the Private Attorney Panel. Another issue identified by the Sixth Amendment Center were inconsistent standards for attorney qualifications supervision, training and workload management. They also identified that there needs to be an improvement in data collection. And so, this bill was created to address some of these systemic issues. The first one of independence, right? This bill reestablishes the Guam Public Defender Service Corporation as an autonomous body structurally independent from the Judiciary, Executive, and Legislature. The seven-member board will consist of two appointees each from the three branches. Two from the legislature—the Speaker, two from the governor and two from the Chief Justice. The seventh member will

be a nominee from the Guam Bar President. This diverse appointment of its board members ensures no single branch exerts disproportionate influence.

Structural independence is a constitutional safeguard. It ensures that the defense function can zealously represent indigent clients and breeds trust in the system by freeing the defense from institutional pressures that could compromise the adversarial and fair system of justice. The U.S. Supreme Court has long held that the Sixth Amendment guarantees not only the right to a council, but the right to effective and conflict free counsel. National standards, including the ABA's revised 10 principles, emphasized that defense services must be free from judicial, executive, or legislative interference to ensure attorneys can advocate solely in the interests of their clients. When Public Defenders are supervised or funded by judges, a structural conflict arises. The same branch responsible for ensuring a fair trial also holds sway over the defender's employment, funding, and assignments.

Additionally, the report recommends that other Board members from the general public with a background in public service be appointed.

For example, the law could require that at least three members of the board shall be members of the public with demonstrated commitment to ensuring effective legal representation for indigent persons. Public members may also include individuals with experience in community advocacy, social services, civil rights work, or personal experience as recipients of indigent defense services.

Another issue, a way that addresses a concern is a statewide scope and oversight. This corporation will oversee all indigent defense functions including Public Defenders, alternate defenders, the Civil Law Center, and the Private Attorney Panels. So, we'll have uniform standards and centralized governance. It would also statutorily create the Alternate Public Defender and the Civil Law Center as separate divisions within the corporation headed by their respective Managing Attorneys. This law will also allow the Board to enact rules and regulations involving minimum standards for attorney qualifications, training and supervision and these will be applicable to all indigent legal service providers. I know currently that both our office and APD, we kind of restrict the type of cases new attorneys have and I think those are the kind of standards that a systemwide Board can enforce amongst the entire indigent defense system.

Another issue that they identified was resource parity and this bill addresses it. By enabling direct appropriations from the legislature, this bill strengthens funding stability and moves toward parity with prosecutorial and law enforcement resources. The legislature, as I said, has done a great job funding the Constitutional rights of our constituents for PDSC and APD, and this bill consolidates that with the entire indigent defense system.



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And although this bill does not have funding, the cost of consolidating all indigent defenses under an independent board will be included in the PDSC budget that will be subject to a public hearing later this term. And our board earlier this day passed a resolution supporting our budget which we'll be submitting May 1st to the legislature and that includes separate funding for the Private Attorney Panel. The Private Attorney Panel deserves to have the same stable and fixed funding source that the legislature has provided to PDSC and APD. The Client Service Trust Fund is dependent on court filing fees and fines. You know, civil filings and traffic tickets and other fines have been decreasing according to the latest citizen centric report issued by the Judiciary of Guam. So increasing filing fees and fines are the only means of increasing that unstable funding source. It's like robbing Peter to pay Paul. Civil litigants and traffic violators should not be shouldering the cost of protecting this constitutional right.

Another issue addressed by the bill is workload control and effective representation. The new board will be authorized to enact rules and regulations regarding caseloads and to hire or contract with appropriate staff. And so, the corporation will be structured to provide effective representation, sufficient attorney time and continuity of council. Another issue is the data collection and valuation. This bill will task PDSC with collecting and analyzing data to support evidence-based policymaking and compliance with constitutional mandates. This will lead to greater transparency as the legislature will know exactly where the appropriated monies are spent.

Finally, continuity of operations. This bill also reenacts statutory provisions currently existing for the operations of the Public Defender Service Corporation, the Alternate Public Defender and the Civil Law Center. I know the Chief Justice also proposed amendments which would continue all current policies and procedures in effect until a full board can decide if they want to change any existing policies. And so, we are in support of any amendment that would ensure the continuity of operations. This legislation is not merely administrative reform. It is a reaffirmation of Guam's commitment to constitutional justice. It replaces a fragmented and underfunded system with a unified, accountable, and professional structure capable of delivering quality legal defense services to all eligible individuals.

Bill 97-38 has also received overwhelming support from the PDSC Board of Trustees which passed the resolution supporting this bill. As Chief Justice pointed out, it would result in both the Chief Justice and the presiding stepping down from the Committee. And so usually, you know, that's a good sign that, you know, obviously the merits of the bill are such that they're

willing to yield that kind of authority over our system. And I think it's a recognition of both how well our office is doing and also the need you know for independence and for the Judiciary to take a step back from supervising the indigent defense system.

The Guam Bar Association also considered a resolution at our annual meeting last week and that resolution also passed by acclamation. I attached copies of both of the resolutions to my written testimony so you could review those as well. So, I along with John Morrison the Deputy Director who couldn't be here, he's currently off island, Ms. Gayle, the Managing Attorney for Alternate Public Defender, and Carol Hinkle-Sanchez, our Managing Attorney for the Civil Law Center and Shane Nauta, our Administrative Director, respectfully urge the legislature to pass Bill No. 97-38 without delay. Doing so will place Guam at the forefront of indigent defense reform in the U.S. territories and send a powerful message about our collective dedication to fairness, justice, and the rule of law. Thank you for your time.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Thank you, Executive Director, for that testimony. And also like to recognize again those who are sitting at the table. Annie Gayle, if, would you like to say anything or, okay.

ANAMARIA GAYLE, MANAGING ATTORNEY, ALTERNATE PUBLIC DEFENDER (APD): Thank you Senator Taitague. I just wanted to say, APD, Alternate Public Defender, fully supports the efforts of Mr. Hattori as well as the Chief Justice. We've been working on this a long time and we would just like to give full support to it. Thank you, your honor. I mean Senator.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: No problem. And Carol, would you like to say a few things? Say your name and your title too as well.

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: My name is Carol Hinkle-Sanchez. I'm the Managing Attorney of the Civil Law Center. I want to also reiterate everything that was said by both the Chief Justice and the Executive Director, that this brings, it's almost a historic moment. 50 years ago, was a historic moment when our senators back then enacted the Public Defender Service Act providing equal access to justice for criminal and civil indigence on the island. So, this is another moment that's going to be historic when we manage to build a system with full independence for the defense system on Guam.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Okay. Thank you so much. If there's not anyone else, I have a couple people who've signed the signup sheet but didn't say whether they are going to testify orally, but Chris Spotanski? Okay. Okay. And I think that's it for now. At this time, I'd like to recognize the author of the legislation, Speaker Blas, you're recognized.

SPEAKER FRANK BLAS JR.: Thank you very much, Madam Chair. And Chief Justice, Director Hattori, ladies, thank you very much for being here. And you know, you're right. I



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mean this is it's been 50 years since we've basically created the opportunity and ensured the opportunity for indigent defense or defense for individuals who won't necessarily have the resources to be able to defend themselves. You know, it's you know as a government, we are obligated to be able to provide equal and full opportunity for individuals to defend themselves. You know, the matter of guilt is a matter of process. It's giving these individuals that right or that ability to be able to defend themselves. And I think that your, this bill provides while it continues to provide that it affirms our commitment that this is going to occur without any specter sphere or anything of interference or influence. And I think that's the main point here. And providing as well our Judiciary you know the true role of being that mediator, that individual that has to be able to determine guilt or innocence. And it's not basically on whether or not we have enough money to be able to do this. Our system of democracy provides that all individuals no matter what race, creed, color, financial background and whatnot has this should have the same opportunity and right to be able to defend themselves, and to be and to be represented as is with every other person that comes before the courts.

So, I appreciate that you know, Mr. Hattori and you know, ladies, that as we move forward, you've got a monumental task, you know, before you, being able to put this together and I trust that if you know, it will get done. Chief Justice, you did mention some of the recommendations you had with regards to specific provisions. Can I ask again for the purposes because we don't have a copy of your testimony here.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Written testimony will be submitted as well.

SPEAKER FRANK BLAS JR.: Okay.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: With the specific language and then we have also offered staff to work with staff on some of the technical edits as well in the markup. So...

SPEAKER FRANK BLAS JR.: Okay. I appreciate that.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Yes.

SPEAKER FRANK BLAS JR.: Other than that, Madam Chair, I'm pretty much satisfied with the testimony being provided and everything, and I look forward to the support of all of my colleagues to be able to move this thing through. Okay.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: And the key point at least for me at the onset was the importance for the transitional period, and that was why we were hoping to get action on the bill immediately because we're looking at an October 1st transition date- effective date. This would give the new board time to come in and develop before one October, I mean October 1st.

SPEAKER FRANK BLAS JR.: And just to provide the assurances in this time frame this period they will still continue to be funded. So, this is not a matter of

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: No, the Judiciary will continue to be responsible for indigent defense through the end of the fiscal year. And so, it's just setting up the new Board of Trustees. We'll basically, you know, end our term as the Board once the bill passes, the new Board will be constituted and they'll start working towards the transitional period of October 1st when the new reconstituted Public Defender Service takes over.

SPEAKER FRANK BLAS JR.: Mr. Hattori, you agree this, that's sufficient time to be able to, assume that things move as the Chief Justice would like for it to move.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): Well, I mean, so I mean it's a monumental task. I know July is our 50th. If we have July to create the new Board, we can say goodbye to the old board and welcome the new board at our 50th Anniversary Conference. But you know, we have a really good team. The Judiciary has a really good team. I think between the two of us, we can make sure it happens on October 1st.

SPEAKER FRANK BLAS JR.: Okay. Same thing. We're all confident. I just want to get that on record so that way we don't come back and say, "I need more time."

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): Yes. My neck is on the line.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: And we're not going to leave them hanging. We'll continue to provide the support that they need to make that transition work.

SPEAKER FRANK BLAS JR.: Thank you very much. Thank you very much, Madam Chair.



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SENATOR TELO T. TAITAGUE, CHAIRPERSON: You're very welcome, Speaker. Vice Speaker Tony Ada, you are recognized.

VICE SPEAKER TONY ADA: Thank you, Madam Chair. I don't have any questions. I just wanted to ensure that when hopefully that the committee report will be able to be generated and completed as soon as possible so that we can get this in our May session. I know that this is important to the courts and to the public sector. So hopefully we'll be able to move it and get it voted on and that way you guys can start processing what you need to do and how you need to go about it.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Thank you Vice Speaker. It is important and anything we can do to facilitate that we will stand ready.

VICE SPEAKER TONY ADA: Yeah, definitely. And we'll also work with the committee chair to get the committee on rules to help facilitate this process. Thank you. Thank you, Madam Chair.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: You're very welcome, Vice Speaker. Senator Shawn Gumataotao, you're recognized.

SENATOR SHAWN GUMATAOTAO: Thank you, Madam Chair, and it's so good to see some of my old friends from the Judiciary of Guam, and let me just say thank you again to all of you for your service to the people of Guam. I just had a couple of questions, Madam Chair, and let me just start with the fiscal note for the bill. The Public Defender Service Corporation informed BBMR that the proposed changes and the fiscal support are crucial in accomplishing the long-term goal of strengthening the access to services for indigent defense mandated by both the Organic Act of Guam and the U.S. Constitution.

Madam Chair, for reference, the PDSC was appropriated \$8,890,546 in fiscal year 2025. Of that amount, \$1,831,79 was allotted to the Alternate Public Defender for its operations, including personnel services during Fiscal Year 2025. Now, as we look forward, the appropriation from the General Fund was provided to PDSC in FY25 for the purpose of funding the Civil Law Center operations, including its personnel services, too. And the appropriation was contingent upon lifting of any moratorium that are currently in effect with future limitations based upon the capacity and priorities of the Civil Law Center to provide legal services to indigent senior citizens, victims of domestic violence, and veterans.

So, Madam Chair, I'll ask the panel with the amount that's included in the Executive Budget request for next this for this coming fiscal year, specifically for the Alternate Public Defender, can you if you can just tell us a little bit about the reasoning for the increase in the budget over the approved that was put out by the, I guess what you guys had and what the Governor had for FY25. Is there any reason for the increase? Should I read it again? I think it was excuse me, \$950,411. Can you talk about this?

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): So, is that the executive submission of the budget bill?

SENATOR SHAWN GUMATAOTAO: Yes.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): I think that's just a placeholder. So, we submit our budget directly to the legislature and we'll meet with OFB about it. So, I don't think it comes out of the Governor's allotted percentage of the...

SENATOR SHAWN GUMATAOTAO: I guess why I'm asking is that, as you know, and I think it's been pretty clear that a lot of what we're about to do over the next couple months is not going to be just about appropriations, it's going to be about policy. And this is what this is trying to help us create. So, I just wanted to put it on the record for the committee.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: And it is an important point. I mean, historically, the Executive Budget has, when it's made the allocations to the Judiciary, to the Public Defender, has been less than what the normal budgetary amounts requested have been.

SENATOR SHAWN GUMATAOTAO: Yes. Thank you, Chief Justice. Since the enactment of Public Law 36-19 in May of 2021, creating the Elder Justice Center within the Public Defender Services Corporation, what information is available regarding the level of federal financial assistance that the Public Defender Service Corporation has been able to obtain to assist our *Manåmko*, and what commitments are we as a local government obligated to deliver on as a condition for receiving this federal support.

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: I can answer that. So basically, it's been a steady amount from the federal side, which is the DSC. We received about \$226,000, but my understanding from staff that attended the Aging Conference in Florida just this past week. There may be potential cuts to the HHS federal monies. We don't know that yet, but the fact is there is a possible potential cut since we're seeing it throughout most federal grants that are being provided. Regardless of whether the Civil Law Center is locally funded, we're going to continue to maintain representation or



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services to the elders as a priority in our office. So, we will continue to service them through the Civil Law Center.

SENATOR SHAWN GUMATAOTAO: All right. Thank you, Carol. And thank you, Madam Chair, for the time. And again, I'm in full support of this measure. And again, it took 50 years, but here we are. And kudos to all of you. Thank you again.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: You're very welcome, Senator Guamtaotao. Senator Shelly Calvo, you are recognized.

SENATOR SHELLY V. CALVO: *Håfa adai and bueñes*, thank you, Madam Chair. And thank you for all your testimonies and for everybody that's here. You know, this is a great bill. Congratulations for the push and thank you to the Speaker for this bill. You know, this bill mandates systematic data collection. So, I don't really have a problem supporting it. And it mandates performance metrics. It improves standards, governance, and oversight of legal and aid services protecting the constitutional right to counsel under Guam law and the U.S. Constitution. My question, just a few questions, just looking into long-term funding. Even though the bill mandates stable funding, the Corporation will still depend on legislative appropriations. Correct. Future budget cuts, political disagreements, or economic downturns could threaten funding stability affecting the Corporation's ability to meet its mandates. Beyond initial appropriations, what strategies are being considered to protect the Corporation against future funding shortfalls? And will there be any reserve funds or alternative funding mechanisms to ensure stability during economic downturns?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Let me speak first to some of the strategies that were examined for the upcoming fiscal year, and the Judiciary's commitment to establishing a stable funding source for indigent defense. For many years, the Judiciary administered the court appointed legal services through funding support from the Judicial Client Services Fund. Over time, the Client Services fund became the sole source of funding for the Private Attorney Panel- it was the Judicial Client Services Fund and the General Fund. But then the Client Services Fund which was never intended to carry that burden alone when the legislature enacted it- It was to help bridge the occasional funding gaps for indigent appointments not to fully fund the system.

So that fund also supports a broad range of other services that are mandated by the statute including language assistance, jury fees, expert fees, law enforcement experts, escort costs, the

operations at Erica's House and counseling services. So, what the Judiciary has done though this year is we have come in and we have deferred our projects. We use strategic planning to identify our budgetary approaches and our budgetary requests. And we have four different pillars of our strategic plan for this year. We have sought to defer some of the projects that we would otherwise have come in to ask for the legislature for funding. We've decided to defer our artificial intelligence projects. We've wanted also our self-represented litigant kiosks, our Court TV for all of the different courtrooms. So, we have pushed those projects down the road, kicked that can down the road, and come in with a very lean budget for the Judiciary, only asking for essentially a status quo budget with no increases, no new positions, so that the legislature would have some flexibility towards funding appropriately indigent defense.

So that's the Judiciary's commitment to ensuring that the right to counsel when someone's liberty is at stake, required by the Constitution, and required for the government to fund. We recognize the importance but this is an important bill, and that's why we've taken the steps. When we talked about our budget request for the Judiciary this year, we said look, the legislature, we've got to give them some movement and some flexibility. So let us come in and not ask for any of those increases that we would generally have asked for with our budget. And so, you'll see when our budget gets transmitted tomorrow, we're asking for no new positions, no new projects for the Judiciary, realizing that indigent defense is paramount and important to fund. So at least from the Judiciary, those are the steps we've taken to give you the flexibility that you need to be able to look at funding of indigent defense appropriately.

SENATOR SHELLY V. CALVO: Thank you so much. That's a really good explanation and support for the record. I have no further questions. It's only that funding because you know we're, everybody has to tighten belts these days, right? But other than that, I will definitely support this bill. This is a great bill and I am hoping that our Speaker, the author, will consider me as one of his co-sponsors for this bill. Thank you.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Thank you, Senator Calvo.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: And thank you, Senator Calvo for your comments. Senator Therese Terlaje you're recognized.

SENATOR THERESE M. TERLAJE: *Si Yu'os ma'åse*, Madam Chair, thank you to Chief Justice and the attorneys here who are presenting testimony and all of you are here for this bill as well. So, I just wanted to clarify that we all support. I think the whole community supports the independence of the criminal indigent defense and all criminal defense. So, the move out of the Judiciary I think is as you know was supposed to be done a long time ago. We couldn't get a bill from a Public Defender back then but I'm glad we have one now. So, we get to do that. My only questions have to do with some of the logistics of it as I share some of the concerns as



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that of the committee in the Judiciary that also reviewed the bill and submitted recommendations.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Private Attorney Panel Commission. Yes.

SENATOR THERESE M. TERLAJE: And submitted their recommendations or concerns to you, Chief Justice. So yes...

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Yeah.

SENATOR THERESE M. TERLAJE: I share some of those concerns but I'm just going to go through some of my questions. So, we support independence. We support that criminal Indigent Defense is a constitutional right. Of course, taxpayers have been funding this for years now. And I think no one does not recognize that it is a responsibility that has to be done. How much has been paid through the Judiciary through the Client Services Fund for indigent defense for example this year?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: It's best if I call our finance person, Diane Gudmalin to give us an accurate portrayal. As you know, we increased the hourly rate and some of the caps for indigent defense. We went from \$90 to \$150. The Private Attorney Panel almost collapsed. We had one person remaining on the Private Attorney Panel. Part of that was the compensation and other issues and we had to make the adjustments for it. We're still less than what we pay at the federal court on the hourly rate and on the caps but we're much more competitive than we were previously. Go ahead Diane.

DIANE GUDMALIN, FINANCE ADMINISTRATOR, JUDICIARY OF GUAM: Thank you, your honor and good afternoon, Senators.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: State your name for the record and your position please. Thank you.

DIANE GUDMALIN, FINANCE ADMINISTRATOR, JUDICIARY OF GUAM: My name is Diane Gudmalin. I am the Finance Administrator of the Judiciary of Guam and to answer the question, former Speaker Terlaje, in Fiscal Year 2024, the Judicial Client Services Fund collected \$1,459,000 and the total amount paid to our Private Attorney Panel solely for legal services and other reimbursements was \$1,573,000.

SENATOR THERESE M. TERLAJE: More than you collected.

DIANE GUDMALIN, FINANCE ADMINISTRATOR, JUDICIARY OF GUAM: That's correct.

SENATOR THERESE M. TERLAJE: Okay. Because then that's the cost that transfers to the taxpayers as opposed to, I think Mr. Hattori was objecting to traffic violators and civil litigants paying, but we're just transferring it from one Peter to another Peter. In his words, instead of robbing Peter to pay Paul, we're really just transferring it from one class to another of taxpayers. So, that's \$1.5 million. And for the Civil Law Center, how much of it has been used in General Fund appropriations on top of the grants that you receive? What is your budget this year?

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: So, we have separate staff that work off the grant. Those are our contracted staff. The remainder of the staff in the office is being billed using local funds to man the office. I don't have the balance to date. I can provide that if it's needed but we have been utilizing the local funds to fund our staff.

SENATOR THERESE M. TERLAJE: How much?

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: Like so just for, are you talking about just for personnel, or you talking about operations wise?

SENATOR THERESE M. TERLAJE: Everything that the taxpayers are paying over and above the grants that the Civil Law Center's receiving.

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: This budget request is going to be \$1,190,000. It was \$950,000 last year I believe or roughly around that or \$951,000 to just kind of... And the purpose of the increase is going to be because we've included retirement. It's organic growth where it's a rollover budget really. It includes organic growth. It includes the 4% increase in retirement and the only thing that it's pulling that was federally funded is the rental of our office space which is about \$38,502,000. So that's rent, that's our rental space. It was funded through ARPA. That's the only thing that was funded through ARPA- was the rental and that's being absorbed into the local. So that obviously is what's showing that slight, about \$157,000 increase from last budget request or last budget's allocation.

SENATOR THERESE M. TERLAJE: Okay, because I remember when it was for the Senior Citizens Contract that they first extended that authority and it was supposed to be covered by the grant for the Senior Citizens Contract, but it's very much expanded by \$1.9 million. Now you're saying one million?



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ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: One Million Ninety, I think, not \$1.9M. Yeah, ninety.

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: And I just want to clarify Senator Terlaje that basically civil indigent services was previously funded under the Public Defenders, their local funds. The only reason why you're seeing the separation and that cost outside of the office is because we separated ourselves so we can create a wall and avoid conflicts.

SENATOR THERESE M. TERLAJE: They were also doing that under grants, right?

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: No, they weren't. Some of it was, but not a lot. So, it was a really small federal grant that they had, which was the Stop Grant.

SENATOR THERESE M. TERLAJE: Yes.

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: But for the most part, they were fully locally funded. They were paid out of the local budget through their Public Defender.

SENATOR THERESE M. TERLAJE: Through the Public Defenders. Yeah. I remember.

CAROL HINKLE-SANCHEZ, MANAGING ATTORNEY, CIVIL LAW CENTER: Correct. And that's why, I mean, I just want to make it clear that it was never fully federally funded. It was locally funded since its inception 50 years ago.

SENATOR THERESE M. TERLAJE: When they expanded, yes. Inception- you're talking about 50 years ago. Then it was put on hold. Then they operated with grants for the civil portions and the rest was Criminal Indigent Defense. And then they came in and got authority to expand for Senior Citizens Services. They said they would be able to sustain themselves on grants, but they were not. So, we've increased the budget over the years. So, I just wanted to put that on the record.

So, one of the questions I guess I have for the Judiciary is, so it was pointed out by the committee that the Financial Management Division that's currently handling the payments to the lawyers that the court appoints is currently very efficient, but it requires labor intensive

work, layers of review and accounting that ensures appropriate and timely compensation of appointed attorneys. And they were concerned whether the Public Defender would be able to handle that transition. Is there any way that the Court could continue to handle those operations and not have a con just the money and the payments to the lawyers versus if you know...

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: I think that for autonomy purposes, I think it's best that the independent agency does it. I'm more than comfortable that the PDSC will be able to handle the financial aspects of it. They're looking for an ASO and an Accounting Technician that will help them fulfill those obligations. And generally, lawyers bill between 60 to 120 days after performance of the services. So, we are going to be responsible for paying all the bills up through September 30th before the cut on 10/1[October 1, 2025]. So, we are actually going to be handling all of the financial arrangements almost through the end of the year. And so, PDSC will be able to be up and running their operations to be able to do that.

The Judiciary is going to help them understand the process- how it's worked in the past, and it's going to give the autonomous Board the opportunity to determine how they want to structure the Private Attorney Panel going forward. And that's really, I think, the most important thing. So, I'm pretty confident that, you know, it's not rocket science we're talking about there, that they'll be able...

SENATOR THERESE M. TERLAJE: Well, this was a concern brought up by the committee that I am repeating.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Yes, and obviously they're concerned because that's money that gets paid to them. They're not going to have to worry for sure. The Judiciary is going to handle their payments up through the end of the year. And I think Public Defender will have the infrastructure set up well in advance for them to be able to manage it going forward.

SENATOR THERESE M. TERLAJE: All right. And then, that would require additional infrastructure at the Public Defender, right? And so, this is another thing. So, it looks to me when reading the bill, you're dividing into divisions. Every division's having a Managing Attorney, and that is like three plus an overall, I can't remember the title, but the manager, I think, and those types of costs. It looks like it's going to significantly increase the cost of the current Public Defender Services even if we added on what was being paid to the client through the Client Services Fund is going directly to lawyers only. Nothing to staff or anything else. Just to the lawyers, the panel.



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ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: The budget that was passed today or recommended to the legislature to evaluate for the total indigent defense package was \$1.6 million.

SENATOR THERESE M. TERLAJE: Are you talking about FY26?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: For 2026, the recommendation was \$1.6M and that that will be sufficient to fund the entire Private Attorney Panel Division.

SENATOR THERESE M. TERLAJE: All right. What do you mean, what recommendation for Public Defender?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: From the Public Defender.

SENATOR THERESE M. TERLAJE: \$1.6 total

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: for the PAP portion. What essentially, what is the Private Attorney Panel now?

SENATOR THERESE M. TERLAJE: Oh

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Yeah.

SENATOR THERESE M. TERLAJE: Right. They have the same amount that's being covered under the client services trust fund.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Correct.

SENATOR THERESE M. TERLAJE: Right, or \$1.5M plus a little bit more.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Yeah, correct.

SENATOR THERESE M. TERLAJE: That's what I mean. So that's one cost that will be increasing on the taxpayer side. There's also another cost for the admin as you call it the infrastructure that the Public Defender...

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: That's included in the \$1.6M, the two positions are included in that.

SENATOR THERESE M. TERLAJE: So, you're going for the status quo for the attorneys plus two positions. But have we received that?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: No.

SENATOR THERESE M. TERLAJE: Okay. So, you're talking about what they're working on.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: It'll be submitted on May 1st.

SENATOR THERESE M. TERLAJE: And then can you just clarify Chief Justice, who will be appointing, who will be determining if this bill passes, who will be determining that a client is indigent? And are you still going to be appointing or referring them because you have found them to be indigent that they go there? How do you foresee that to be?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: The determination of indigency will be based on the standards that exist now for purposes of indigent defense. It may be modified in the future. But there are standards for determining when a person qualifies, and if that person qualifies then he's entitled to constitutional representation.

SENATOR THERESE M. TERLAJE: Yeah, but who will be making that determination?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: The determination will be made by the independent Bboard.

SENATOR THERESE M. TERLAJE: Okay, because that's another one of the points that was brought up in the letter and it talks about, *it is the Judiciary sole responsibility which includes appointing legal counsel for indigent defense and criminal cases*. And that's why I wanted to clarify if the appointments will be continue to be made like you appoint Public Defender or you and then they decide among themselves whether it goes to Public Defender, Alternate Public Defender or where it has to go or to the client panel.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: I think the whole intent of the bill is to take the Judiciary out of the business of indigent defense and the indigent ...

SENATOR THERESE M. TERLAJE: So how would a client then... Steve, how do you foresee the clients actually getting to you if they're going to court first, they're mandated to go to court.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): So typically, at the Magistrate Hearing they'll find out if they meet the income guidelines and then we would automatically get appointed.

SENATOR THERESE M. TERLAJE: You get appointed, right? Yes, so how do you foresee it to be working?



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STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): Yeah, it should pretty much work that same way.

SENATOR THERESE M. TERLAJE: You would be appointed by the Judiciary, by the judge, right? So, I think the judge still has to make an appointment. And so, I think that's the question. If that was the case, then the judge should be making the determination as to indigency. That was one of those technical things that was brought up in the letter and I'm hoping you guys have...

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): I think ultimately, I mean so currently they use guidelines that the Public Defender board passes and recommends. And so, I think there should always be a procedure where if an individual disagrees with you know our board that they can appeal it to the court and say you know, *notwithstanding those guidelines I believe I still should have an attorney*. So, but you know there will be procedures set up to develop you know to make that clear right.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Well, the bill is clear that the Corporation has to accept all appointments from the courts to provide legal services unless they have a conflict of interest. So, at the beginning, yes, we make the appointment, but then each of the respective divisions, it'll go from the PDSC down to the APD to the PAP. If all four are conflicted, ultimately the Board will decide the last tier how that appointment will work.

SENATOR THERESE M. TERLAJE: Yeah. So my only issue is I think there might be some language that needs to be tweaked to make sure there's no inconsistent language in the bill from where we all agree that it's the court the judges who are actually appointing to go to the Public Defender and then and then the new process will take place when the court makes its appointment how it determines that- that's going to be up to the court right, is that correct?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: And I think in the bill itself it also makes clear that the determination of whether a defendant is indigent is at the discretion of the judge before whom the defendant is appearing.

SENATOR THERESE M. TERLAJE: It does in one point, but isn't there another point, Steve, where it says that the Commission is going to determine the guidelines? Yes...

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: That's, but I mean, if the judge makes a determination that the person doesn't qualify in his discretion on those guidelines, he won't appoint that person.

SENATOR THERESE M. TERLAJE: I just think that we need to make sure that that's clear. And the bill describes that the Public Defender Service Corporation will be autonomous and independent and of any other branch of the government of Guam. It can't really be autonomous because it's not producing its own revenue, right? But it's going to be completely funded by taxpayers except for the parts that are funded by grants such as the senior services, Senior Legal Services Contracts with public health. Does the bill cover representation at the appellate level? Okay. Did you get a copy? You're on the committee. You were cc'd the letter from Chief; I mean Justice Carbullido representing the PAP standing committee. It says they're recommending that language be included to assure appellate jurisdiction.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): Oh, I don't have any problems with that. I thought, I just assumed that the appellate, it would cover appellate representation like it currently does. So, but if we need to clarify that, we could spell it out.

SENATOR THERESE M. TERLAJE: All right. And then, the rest of the discussion is still that who decides whether they're indigent and who is actually making the appointment. And then will Guardians Ad Litem be included?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: They are.

SENATOR THERESE M. TERLAJE: Will they be included under this new one?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Yes. And those are some of the technical edits that are there.

SENATOR THERESE M. TERLAJE: They're not currently included, right? Only indigent legal representation or the other juvenile representation of attorneys. But the guardian I guess he's saying the Guardians Ad Litem provision is separate and should be either separately included or not. So that, these are just things that, yeah there should be a distinct appointment structure for the Guardian's Ad Litem and other juvenile proceedings and juvenile delinquency cases. All right. So, I also listened in on the informational briefing that the Public Defender gave to the Guam Bar and there were some questions brought up about the bill requirement that members of the board be lawyers, but does not require them to be licensed in Guam and, I guess, that they won't be directly familiar with the local legal system, the unique challenges we face. I didn't hear any recommendation today to make any changes to that. Are you saying Steve that this is a benefit- to have off island lawyers on our Criminal Defense Commission?



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STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): I think that might be considered one of the best practices now. Just so that you have an independent outside disinterested attorney but who still must protect the right to counsel. But realistically because of our time zone it's not likely we would get anybody who isn't already on Guam. But we're not objecting to changing that out.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: The bill does allow for attorneys who are not licensed members of the Guam Bar to still sit on the Board of Trustees, and the Guam Bar supported the legislation unanimously. I know there was some discussion and whether that comes to fruition or not will depend. But it might be an opportunity to get someone with significant experience in indigent defense who can be an asset, but isn't a member of the Guam Bar.

SENATOR THERESE M. TERLAJE: Are you saying Steve that in other jurisdictions they put lawyers from outside of their jurisdictions onto their Commissions- from outside of their jurisdictions?

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): That's correct. And I'm not sure if it is the DD.

SENATOR TELO T. TAITAGUE: Yeah, I was just going to say Senator Terlaje, let me go ahead and give that question to Ms. Goel, if she's still there from the Sixth Amendment Center.

ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): I am Thank you for the question. So, it's an important one. There's nothing that prohibits; there's nothing in the law or in national standards that prohibit lawyers from outside of the jurisdiction being appointed to and being members of a board. There also is no one cookie cutter model for how and which kind of appointments should be on the board. I think this is particularly beneficial for Guam because during the evaluation, it really became apparently clear that because of Guam's location it could help from having and feeling less isolated by having the option of having other lawyers who still must abide by the Sixth Amendment law in the US Constitution to present on the board and to be on the board. I think the language of the bill wouldn't make it a requirement, just provides an option for the board to have in the event it's necessary, and in the event that it's desired. Currently, this is not something that other jurisdictions have practiced yet. However, it actually has been the cause of some Commissions dissolving because they could not find members to actually be on the Board because of lawyer shortages

and other issues in some of the rural states. So, this is actually something where its lessons learned of what's going on in mainland in some of the states and to at least provide the option for Guam.

SENATOR THERESE M. TERLAJE: All right. Thank you. So, it has not yet been practiced in other jurisdictions, but I appreciate your testimony. Thank you. So, I'm all for the data collection because this should all be driven by data. It's very specific what type of data should be collected. And I'm curious whether we actually have this already because they made kind of a big deal about having to do this, and it's going to be a big burden. But how much time actually required to effectively represent each indigent defendant in each type of case. How many cases each defense system attorney is handling in a given year. What other workload responsibilities each defense system attorney has in a given year, and whether each indigent defense system attorney is working with sufficient support to allow them to dedicate adequate time to each defendant. So it's great if we don't have that yet that we're going to be collecting that data and reporting that on a regular basis.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): We kind of have that data for APD and PDSC. So, we actually kind of have multiple data already for PDSC and APD.

SENATOR THERESE M. TERLAJE: That's what I thought.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): We just want to provide that also for the Private Attorney Panel.

SENATOR THERESE M. TERLAJE: Okay.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): We don't want them to be overwhelmed if you know too many.

SENATOR THERESE M. TERLAJE: So, this is something that should already be being done, right? Except for the private attorneys maybe. All right. And then I thought I also read somewhere in the report that the Private Attorney Panel cannot be managed by the Public Defender by the independent defense commission. Yes. But not by this Public Defender because there would be a conflict. But I mean, but do you see the format as given in the bill to be correct in that regard?

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): I mean I have an answer but maybe Aditi, is she still available?

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Okay. Ms. Goel. It's Goel right. How do you pronounce it? Goel. Did you hear the question? Did you hear the question? Okay.



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ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): I did hear the question. Thank you. Yes, senator. It is typical that there would be a Managing Attorney within the public defense organization to be providing oversight, fiscal oversight and there be autonomous oversight of the private attorneys. So that is the structure that is recommended.

SENATOR THERESE M. TERLAJE: All right. not separate, right? Not they should not be separate.

ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): That's correct. It should be part of the overarching Public Defender Service Board. That's correct.

SENATOR THERESE M. TERLAJE: All right. I'm just making sure. And then the Chief Justice has recommended a 90-day implementation period. I think the committee had recommended six months, but they're saying if you're recommending 90 days and they're confident that 90 days is okay. I'm not sure. But one of the things that the commission will have to do is to develop standards right as to how you're going to develop conflicts. All of the standards; indigent conflicts when do you go to this panel versus that panel versus that panel? These standards, have you prepared them already?

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): I mean, so we already have standards that apply to our office and APD. It would just be a matter of extending them to the Private Attorney Panel. I don't really know what standards they're using.

SENATOR THERESE M. TERLAJE: All right.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): But we'll all be on the same standard.

SENATOR THERESE M. TERLAJE: Okay. Could I get a copy of that, please? The standards. And then if there's something that the Judiciary uses to review billings, I just want to know what categories do they look at to review billings and who makes that determination whether too many hours or acceptable.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): And that's really why an independent commission is kind of better in ways because the Judiciary they don't really like overseeing the work product defense

attorneys but these independent commissions since they're they don't that's what they end up doing and so there is a lot of...

SENATOR THERESE M. TERLAJE: So, I just want to see if the Judiciary has their standards already in place and we could just look at it, because I'm guessing as you guys have described it that it may be adopted or moved over to the Public Defender. Hopefully very similar.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Yeah, I think that would be the recommendation at the onset, but obviously it will be up to the independent commission to determine what they want to do, but you know that they look at the standards that are currently adopted and transition over using that as a guide.

DIANE GUDMALIN, FINANCE ADMINISTRATOR, JUDICIARY OF GUAM: So, Senator, we do have a miscellaneous rule adopted by the Supreme Court and it is available on our website as well to all of our panel members. So, it's a miscellaneous rule and that has the standards relative to what is reimbursable, certain caps based off of the case types, and then service period, and then the hourly rate.

SENATOR THERESE M. TERLAJE: Sorry. Okay, thank you. So, this defined workload limits, that's one of the things. Do you have currently defined workload limits?

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): So, I guess the ABA approved new workload limits in I think it was November of 2023. We haven't actually adopted those or implemented any of them.

SENATOR THERESE M. TERLAJE: Yes, so for me it's the workload limits that you adopt or this commission adopts that's going to really impact the amount. I mean, that means the commission says this is your workload limit. That means you can't handle any more cases. That means we need more lawyers. That means we need more money. Right? And so that's our concern or at least one of my concerns, not all. Are you proposing to adopt the ABA? And if you did, what kind of impact is that going to have? Are we going to have to double our fleet of lawyers in the Public Defender's office to cover those workload limits? To me, that's where discretion really matters because our funds are limited. I agree criminal indigent defense is a priority, but we're also losing that pot of money from the Judiciary. It's being transferred over to General Funds. So, do you have an estimate of what these defined workload limits might impact budget wise?

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): So, we actually haven't calculated what they would be but we could tell you across the nation they are resulting in reduced caseloads. But you know obviously we're really restricted by the budget that we're provided.



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SENATOR THERESE M. TERLAJE: So, you think it would work in reverse. You get the budget and then you determine workload.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): Well, I mean obviously like some jurisdictions they're developing like five- or seven-year plans to increase the number of attorneys to meet that workload. And you know, the workload, it's just a recommendation as long as we can provide, you know, the goal really is to provide effective representation that is competent, right? And so as long as the workload does not exceed that then I think you know we're fine.

SENATOR THERESE M. TERLAJE: Okay. All right.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): Don't want cases getting reversed because of stuff like that.

SENATOR THERESE M. TERLAJE: Yes, okay. Fine, find. Well yes, we don't want that either, right. And the discretion has to be with the legislature as to the funds that are available. Did the Sixth Amendment Commission report include any recommendations as to the Civil Law Center? Because I didn't see any- only the Public Defender and the APD. Is that correct?

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE

CORPORATION (PDSC): That's correct. I don't think that was actually part of the report.

SENATOR THERESE M. TERLAJE: Yeah, I didn't see that in the report. It seems to me it was only Guam that included that.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Can I ask Miss Goel from the Sixth Amendment to answer that question as to why it was not included into the report?

ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): Yes, absolutely.

So, the contract and our evaluation are of services that are required under the Sixth Amendment in the U.S. Constitution, to the extent that we touched on the Civil Law Center, was to discuss how it overarchingly can affect funding of everything or the attorney workloads if there was a crossover of the attorneys, which there really wasn't. So typically, we do not evaluate civil legal services.

SENATOR THERESE M. TERLAJE: All right, I appreciate that. So, I guess my point is there's nothing that's in the Sixth Amendment that's requiring that the civil part of the Public Defender currently being together with the indigent criminal defense part. And, we are trying to resolve the indigent criminal defense part and we are also trying to fund civil work when we can. But so, but I appreciate all your work. So, I want to just thank you all for your work on the bill and getting the consensus of the stakeholders. And *Si Yu'os ma'åse*. Thank you, Madam Chair.

SENATOR TELO T. TAITAGUE: You're very welcome, Senator Terlaje.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: If I may, Senator Terlaje had asked about the National Public Defense Workload Standards. And the current ones that Steve was recommending for felony cases. They average from 286 hours for a sentence of life without parole, murder cases- 248 hours, sex crimes-167 hours and other high felony cases 99 hours. So, they range from... and then misdemeanor or parole violation cases average 13 and a half hours. So, it goes from 13 and 1/2 hours to 286 hours.

SENATOR THERESE M. TERLAJE: Yeah. So, my question was, have we adopted those? Do we exclude clients because we've met those limits or not? But as Mr. Hattori assured me, they would not be doing that. They would work with the budget they're given and they would continue to accept even if it exceeds those standards. Hopefully not, but if it does, they would continue to work as best they could to manage that. Correct?

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): Yeah, that's correct.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Currently, PD does not have adopted standards where they refuse to accept workload in excess of the recommended.

SENATOR THERESE M. TERLAJE: That's why I'm checking because they said they're going to establish that standard, the commission would, and then it sounds like everybody would have to abide by it. But *Si Yu'os ma'åse*, thank you, Madam Chair.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: You're very welcome.

SENATOR SHAWN GUMATAOTAO: Madam Chair, have a quick question for you. I know the bill's 29 pages and I'm not sure how long the Sixth Amendment Center's report is, but I'm hoping that...

SENATOR TELO T. TAITAGUE, CHAIRPERSON: 72 pages.

SENATOR SHAWN GUMATAOTAO: Yeah. I'm hoping that they'll, if you'll...



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SENATOR TELO T. TAITAGUE, CHAIRPERSON: It'll be in the Google Drive. Yes.

SENATOR SHAWN GUMATAOTAO: Well, I mean at least they'll go into the report.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Absolutely.

SENATOR SHAWN GUMATAOTAO: All right. Thank you, ma'am.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Yes. In fact, again, I'd like to thank Ms. Goel from the Sixth Amendment, who's still online with us. And I know it's probably quite early in the morning over there. So, I appreciate you hanging in there for this is a very important piece of legislation. Like I said, it's long overdue. We want to do it right the first time, you know, and there are some, you know, there nothing's perfect at this point, but we're going to do everything we can to make it as perfect as possible. And that's why I'm extending, you know, everyone to discuss this even in depth when it comes to the cost, which there will be a cost, you know, at \$1.5 million coming from the Client Service Fund. Yeah, I even said that Client Service Fund. You know, this funding I think was in the 33rd Guam Legislature when they incorporated additional strain on this fund. If I'm not mistaken to take over language I think interpreters for that.

So, you've added on to what was once three to four areas in which to cover now and g I'm looking forward to the budget hearing to discuss more of that and how we can fund this area because there's going to be a startup cost and we know that the Judicial branch wants PDSC to be independent of the Judicial branch. But of course, it comes at a cost and that's something we're going to have to look into. I do just have slightly a few questions, most of them were answered that I had. But on page 12 of the legislation that's before us today, my concern that was brought up earlier about being a corporation, you can't be a corporation if you're an autonomous agency. You can't abide by that. So, I was looking if anyone has any objections to Section 11103- Establishment of a Public Defender Service Corporation, in order to provide effective public legal services to those persons in Guam. There was created a public corporation to be known as Guam Public Defender Service Corp. period- after that strike out everything else.

STEPHEN HATORRI, EXECUTIVE DIRECTOR, PUBLIC DEFENDER SERVICE CORPORATION (PDSC): I think that I wouldn't have an objection to that. In fact, we were going to actually try to see if we could just because we would have to get a new EIN number if

we change our name. We were hoping to just keep a Public Defender Service Corporation as the name of that.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: So okay. So that's a good question. With regards to maintaining the same name so that you don't have to change your corporation, Chief Justice, is there any issue with that?

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: There's none.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Okay. So, it's noted and we will make that change to ensure that and to provide that Corporation that it is a corporation. So, I will get with you as we go through the Markup meeting. There's a lot of stuff to talk about in the Markup meeting.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: And we do and most of the PAP committee, just points were at technical edits that we have markups ready for with you, Senator.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Absolutely.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: And like I said the main parts for us were the transition from the fixed fee versus the capped fee and then clarifying that when you get to that fourth tier you have an independent appointment system.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Okay. Well, thank you for that. I again I'd like to thank Aditi. How do you say your name, Steve? Aditi. I did say it right. Okay.

ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): That was perfect. Yes.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Oh, thank you so much. Again, I appreciate your time that you spent for us. The report being 72 pages long was good reading. But there is one question I'd like to ask you is- have you read the legislation in front of us today?

ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): Yes.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Okay. And is there anything in this legislation that you may have some concerns with- that you've as a professional and put this together that found that it didn't work but yet it's still in here? I mean, Guam is a different character all by itself, you know, compared to the mainland and just wondering if you see anything in the legislation that we might look at a second time or consider to change or amend.



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ADITI GOEL, DEPUTY DIRECTOR, SIX AMENDMENT CENTER (6AC): There is nothing in this legislation that concerns the Six Amendment center and we do believe that this addresses all of the concerns from the report.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Okay. Well, thank you so much for that and for your time as well. And at this time, I'd like to give the closing to the author of the legislation, Speaker Blas. You are now recognized.

SPEAKER FRANK BLAS JR.: Thank you, Madam Chair, and thank you to my colleagues for the questions, and most especially thank you to the panel for being here- Ms. Gayle, Ms. Sanchez, Chief Justice, and Mr. Hattori. Ma'am, thank you very much. You know, you're right. You know, this is monumental, but at the same time, what this bill basically provides is an opportunity to get things rolling and to iron out. That's what this public hearing is for, is to iron out a lot of the kinks and a lot every time we put something together, we go back, there's always something that we can make better. And that's what we're doing here. I've got no palms and no concerns with regards to, you know, some of the issues that were brought up and some of the things that we can change. I think we have enough time to be able to do this. And I look forward to working with the committee and as well as, you know, your staff.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: My staff's done a great job and they'll be working with you very closely and with the Chairwoman to make sure that we get everything needed, to get the bill ready, and submitted and the committee report done.

SPEAKER FRANK BLAS JR.: Okay. Well, you know, we are working with a very tight timeline, so you know, we're going to be putting everybody on overtime. Okay, they know how...

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: They're ready.

SPEAKER FRANK BLAS JR.: They know how to get a hold of me. All right, so we'll go ahead and continue to work that way. But thank you very much and look forward to continuing to work with you, getting enough of the kinks out of it so that when it does hit the floor, it does get the support necessary to finally move this forward. Thank you, Madam Chair, for not only having this hearing but for co-sponsoring this bill with me.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Thank you.

SPEAKER FRANK BLAS JR.: Thank you very much.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: Thank you.

ROBERT J. TORRES, CHIEF JUSTICE, JUDICIARY OF GUAM: Thank you, senators. Appreciate your questions and thank you.

SPEAKER FRANK BLAS JR.: And I do recognize Senator Shelly Calvo's request and I will address it when we hit the floor. Okay.

SENATOR SHELLY V. CALVO: Thank you.

SPEAKER FRANK BLAS JR.: Okay.

SENATOR TELO T. TAITAGUE, CHAIRPERSON: At this time, I also like to recognize that we received the fiscal note from BBMR on April 17, 2025. Legal counsel has reviewed this legislation with no recommendations of changes or amendments at this time.

And lastly, the invitees for this were the Judiciary of Guam, Public Defender's office and of course across the ocean is the Sixth Amendment Council Corporation. At this time if there's no further questions or comments, this bill has been heard, Bill 97-38 (LS).

If there are any written testimonies on today's hearing within five business days, please submit that to my office at 238 Archbishop Flores Street 407 at the DNA building in Hagåtña. You may also send your written testimony to my office email at senatortelot@gmail.com. Thank you all for your participation. Create a great day.

Public Hearing Adjourned at 3:40 p.m.

I. FINDINGS & RECOMMENDATIONS

The Committee finds that Bill 97-38 (LS) seeks to reorganize the Guam Public Defender Service Corporation (PDSC) into an independent body that provides legal aid to indigent persons as constitutionally mandated. The bill establishes a seven-member Board of Trustees with equal appointments from the executive, legislative, and judicial branches, plus one appointment from the Guam Bar Association, ensuring structural independence and eliminating judicial oversight of the defense function. The bill reflects recommendations from the Sixth Amendment Center (6AC) report and follows American Bar Association standards, calling for independence, performance metrics, uniform qualifications, workload management, and improved data collection. The reorganized PDSC will oversee the Public Defender, Alternate



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Public Defender (APD), Civil Law Center (CLC), Private Attorney Panel (PAP), and Guardian ad Litem appointments

Chief Justice Robert J. Torres of the Judiciary of Guam testified in full support of the bill's intent to make the PDSC independent and align with national standards, and offered the following recommendations:

- Legislature should pass the bill swiftly to allow the Board to be formed 90 days before the October 1, 2025 effective date.
- Amend §11109(j) to clarify that the prohibition on flat fees does not bar reasonable capped fees.
- Amend §45.40 to specify that the Board of Trustees (not the Judiciary) shall handle appointments when conflicts arise.

Aditi Goel, Deputy Director, Sixth Amendment Center (6AC) testified in full support of the bill, and confirmed that it reflects all 6AC recommendations to address a lack of structural independence, unstable funding sources (fines/fees), inconsistent standards and training, and a need for unified oversight and data systems.

Stephen Hattori, Executive Director of the PDSC testified in strong support of the bill, noting that it will enable structural reform and independence. Hattori also recommended the following:

- Include statutory authority for APD and CLC as divisions.
- Authorize Board to set attorney qualifications, workload caps, and rules.
- Establish direct legislative funding for PAP to avoid relying on fines/fees.
- Clarify that current policies remain in effect until the Board decides otherwise.

Justice F. Philip Carbullido of the Private Attorney Panel Committee submitted comprehensive and detailed recommendations (via Judiciary) with the goal of ensuring the transition is practical, legally sound, and does not compromise judicial oversight or attorney support structures.

During the hearing, Vice Chairperson Senator Therese Terlaje expressed support, but noting technical and budget concerns. Vice Chair Terlaje asked for clarification on who determines indigency and makes appointments, as well as on whether additional infrastructure costs (e.g.,

new admin positions) are fully funded. Vice Chair Terlaje recommended revisiting language on court discretion and indigency determinations to avoid ambiguity, and urged inclusion of appellate jurisdiction and Guardian ad Litem appointments in statutory language.

Committee member, Senator Shelly Calvo expressed support of performance metrics, but raised concerns about Long-term funding stability, particularly in economic downturns and inquired if reserve funds or contingency planning are in place. Senator Shawn Gumataotao also expressed support of the bill and structural reform, but raise questions about Budget discrepancies and increases for the Civil Law Center, as well as the sustainability of federal funding for senior legal services.

The Committee finds that there is strong support for the passage of Bill 97-38, with key recommendations focusing on ensuring clarity in statutory language, operational continuity, and funding stability. Based on the feedback submitted during the public hearing, and the bill markup process, Bill No. 97-38 (LS) was amended as follows:

1. Clarify Compensation Practices: Section 11109(j) is amended to clarify that reasonable case-type-based caps on compensation for Private Attorney Panel (PAP) attorneys are allowed. This responds to concerns that the bill’s original language could be misinterpreted as prohibiting such caps.
2. Confirm Transition and Implementation Timelines- A new provision is added requiring that the Board of Trustees of the PDSC be constituted and that initial policies and procedures be adopted no later than 90 days prior to the effective date of the Act (October 1, 2025). This ensures that the administrative structure and operational rules are in place before full implementation.
3. Preserve Judicial Authority and Clarify Oversight Boundaries- Section 11103 is revised to
 - a. Reaffirm the Supreme Court of Guam and the Legislature’s constitutional and statutory authority under the Organic Act.
 - b. Remove or revise overbroad language (e.g., references to PDSC controlling all “jurisdiction” or “delivery” of public legal services).
 - c. Clarify that the PDSC is not a separate branch of government and remains subject to government oversight, including judicial and legislative authority.
4. Continuing funding source - § 1115 is amended to be consistent with § 9602 of Chapter 9.6 7 GCA, ensuring that even after the PDSC is restructured as an independent entity, it can still access funds from the Judicial Client Service Fund to support its operations, particularly the PAP division.
5. Align Appointment Language Across Sections- Sections 11104 and 45.40 are aligned to clearly define:



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- a. How appointments are made when PAP attorneys are unavailable.
- b. That appointment discretion remains with the judge, but the PAP Division (within PDSC) administers the appointment process.
6. Include Appellate Representation- Section 11104(d)(5) is amended to ensure that PAP services include appellate cases and writs, not just trial representation.
7. Remove Redundant or Misleading Language- Removes language that could imply the PDSC operates entirely independently of all other government branches.
8. Clarify Guardian ad Litem Appointment Process- Adds language to address juvenile matters and GAL appointments, establishing a clear appointment hierarchy.
9. Technical and Structural Cleanups- Various non-substantive edits are made to improve legal clarity, consistency, and structural accuracy, reflecting input from the Judiciary, PDSC, and the PAP Standing Committee.

The Committee finds that amendments to Bill 97-38 (LS) refine and clarify the reorganization of the Guam Public Defender Service Corporation (PDSC). Overall, strengthening the bill by enhancing its legal precision, preserving constitutional balances, ensuring operational readiness, and safeguarding the fairness and sustainability of Guam's indigent defense system.

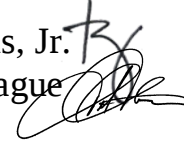
The Committee on Economic Investment, Military Buildup, Regional Relations, Technology, Regulatory Affairs, Justice, Elections, and Retirement hereby reports our Bill No. 97-38 (LS) As Amended- Introduced by Frank F. Blas, Jr., Telo T. Taitague- *"AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE "PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025."* with the recommendation [To Report Out Only](#).

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 97-38 (LS)

Introduced by:

Frank F. Blas, Jr.
Telo T. Taitague



AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE “GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025.”

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. I Liheslaturan Guåhan finds that the right to counsel is a fundamental guarantee under the Organic Act of Guam and the Sixth Amendment to the United States Constitution. This right obligates Guam to ensure effective assistance of counsel to indigent individuals facing a potential loss of liberty.

I Liheslaturan Guåhan further finds under Guam law, the Public Defender Services Corporation (PDSC) administers the majority of adult and juvenile trial and appellate representation throughout Guam. In this system, primary representation is provided by public defenders from the PDSC division, while secondary

1 representation is administered by the Alternate Public Defender (APD) division.
2 Tertiary representation is provided by a Private Attorney Panel appointed by the
3 Judiciary and compensated on an hourly basis. In cases where no panel attorney is
4 available, judges have the authority to appoint a licensed attorney to ensure
5 representation.

6 *I Liheslaturan Guåhan* further finds that a March 2024 evaluation by the Sixth
7 Amendment Center identified challenges in achieving full independence for Guam’s
8 indigent defense system, which is essential to ensuring effective representation and
9 public confidence in the justice system. The report highlighted the need for an
10 independent governance structure to oversee indigent defense services, addressing
11 key areas such as attorney qualifications, supervision, and resource allocation.

12 *I Liheslaturan Guåhan* further finds that for years, the Judiciary of Guam has
13 overseen and provided administrative support for the operations of the Private
14 Attorney Panel. While the Judiciary’s leadership has been necessary to ensure the
15 right to counsel during the early development of indigent defense, *I Liheslatura*
16 recognizes the importance of establishing independence to prevent undue influence
17 from any single branch of government, improving the delivery of justice and
18 upholding constitutional rights.

19 It is therefore the intent of *I Liheslaturan Guåhan* that the Guam Public
20 Defender Service Corporation shall manage the island’s public legal services
21 delivery system. This corporation will oversee all indigent defense services on
22 Guam, including, at minimum, a public defender division, an alternate public
23 defender division, a civil legal services division, and a private attorney panel. The
24 corporation will further have the authority to promulgate and enforce standards for
25 indigent defense, collect and analyze data, and allocate resources to maintain
26 effective and equitable representation.

1 *I Liheslaturan Guåhan* further finds that indigent defense services on Guam
2 are partially funded through the Judicial Client Services Fund, which is under the
3 stewardship of the Judicial Council (7 GUAM CODE ANN. §9602). All fees, fines,
4 or revenues approved by the Supreme Court of Guam or the Judicial Council and
5 collected by the Courts of Guam, which are over and above the fees collected as of
6 September 12, 2002, are deposited into this fund.

7 *I Liheslaturan Guåhan* further finds that the Judicial Client Services Fund was
8 not established to fully support indigent defense but to serve as a supplementary
9 source to bridge funding gaps (Committee Report on Bill No. 124-33). Indigent
10 defense is only one of several critical services the Fund supports. In addition to
11 indigent defense, the Fund also supports client services and family counseling, off-
12 island marshal escorts, operations at Erica's House, interpreters through the
13 Language Assistance Program, as well as claims for expert witnesses, investigators,
14 jury fees, and other necessary expenses. Additionally, the Fund oversees mediation
15 services related to custody and visitation of minor children when ordered by the
16 court, as permitted under Miscellaneous Rule 4 of the Local Rules of Court.

17 *I Liheslaturan Guåhan* further finds that from 2005 to 2019, indigent defense
18 was primarily funded through direct appropriations from the Legislature to the
19 Judiciary (P.L. 28-68; P.L. 28-150; P.L. 29-19; P.L. 29-113; P.L. 30-55; P.L. 30-
20 196; P.L. 31-77; P.L. 31-233; P.L. 32-68, P.L. 32-181, P.L. 33-66. P.L. 33-185, P.L.
21 34-43; P.L. 34-116). These appropriations, sourced from the General Fund, were
22 designated specifically for court-appointed attorney fees to support the legal defense
23 of indigent individuals. Despite continuing to oversee the private attorney panel, the
24 Judiciary now receives no direct legislative funding for indigent defense and relies
25 on fines and fees within the Judicial Client Services Fund. This absence of direct
26 funding poses significant challenges in maintaining quality indigent defense
27 services.

I Liheslaturan Guðhan further recognizes that the Sixth Amendment Center has found fines and fees to be an unstable and unreliable primary funding source for indigent defense. According to the Sixth Amendment Center, national standards call for state funding through local government appropriations (Sixth Amendment Center, “How to Fund,” 2025). There is no correlation between the financial needs of an effective indigent defense system and revenue generated from fines, such as those assessed on traffic violations. The Sixth Amendment Center further reports that relying on such sources jeopardizes the consistent delivery of constitutionally mandated legal representation (Sixth Amendment Center, “How to Fund,” 2025).

I Liheslaturan Guåhan therefore intends to appropriate funds directly to the Guam Public Defender Service Corporation, ensuring a reliable and stable funding source.

Through this legislation, *I Liheslaturan Guåhan* reaffirms its commitment to protecting the constitutional rights of all residents.

Section 2. Chapter 11 of Title 12, Guam Code Annotated is hereby *repealed* and *reenacted* to read:

“Chapter 11

Guam Public Defender Service Corporation Act

~~§ 11101. Short Title.~~

~~§ 11102. Definitions.~~

~~§ 11103. Establishment.~~

~~§ 11104. Duties: Criminal Cases.~~

~~§ 11104.1. Public Defender Assistance in Connection with Recovery~~

~~and Probate of Land Claims Awards.~~

~~§ 11105. Same: Civil Matters.~~

~~§ 11106. Powers.~~

~~§ 11107. Board of Trustees.~~

1 ~~§ 11108. — Director.~~

2 ~~§ 11109. — Personnel.~~

3 ~~§ 11110. — Employment.~~

4 ~~§ 11111. — Attorneys.~~

5 ~~§ 11112. — Employees.~~

6 ~~§ 11113. — Fiscal Authority Accounting; Expenditures.~~

7 ~~§ 11113.1. Lapses.~~

8 ~~§ 11114. — Transfer of Property.~~

9 ~~§ 11115. — Federal Landtakings; Legal Aid and Assistance.~~

10 ~~§ 11116. — Same: No Charge for Costs and Services.~~

11 **§ 11101. — Short Title.**

12 This Chapter may be cited as the *Public Defender Service Corporation*
13 ~~Act of 1975.~~

14 **§ 11102. — Definitions.**

15 (a) — *Corporation* means the Public Defender Service Corporation.

16 (b) — *Board* means the Board of Trustees of the Public Defender
17 Service Corporation.

18 (c) — *Director* means the Director of the Public Defender Service
19 Corporation.

20 **§ 11103. — Establishment.**

21 In order to provide effective legal aid and assistance to those persons in
22 Guam who are unable to afford counsel, there is created a public corporation
23 to be known as Public Defender Service Corporation.

24 **§ 11104. — Duties: Criminal Cases.**

25 It shall be the duty of the Corporation to defend indigent persons
26 charged in criminal cases before the courts of Guam. The determination of
27 whether a defendant is indigent and whether his case is to be referred to the

1 ~~Corporation shall be at the discretion of the judge before whom such~~
2 ~~defendant is appearing. The Corporation may assist the judges of the courts~~
3 ~~of Guam in determining when the services of the Corporation are appropriate.~~

4 **§ 11104.1. Public Defender Assistance in Connection with Recovery and**
5 **Probate of Land Claims Awards.**

6 ~~The Public Defender is authorized to provide legal services in~~
7 ~~connection with the recovery of settlement shares and probate administration~~
8 ~~of land claims awards, to persons who are unable to obtain the legal services~~
9 ~~of a private attorney. No such services shall be provided unless the applicant~~
10 ~~therefor shall have produced proof, in form and substance approved by the~~
11 ~~Public Defender, that no less than three (3) private attorneys have declined to~~
12 ~~provide the requested services. The Public Defender shall not, in any event,~~
13 ~~represented any person who opposes or objects to, or who intends to oppose~~
14 ~~or object to, an application for payment of a settlement share, a petition for~~
15 ~~letters of administration or for preliminary or final distribution, or a petition~~
16 ~~pursuant to § 4906 of Title 15 of the Guam Code Annotated, the subject of~~
17 ~~which is a land claims award.~~

18 **§ 11105. Same: Civil Matters.**

19 ~~The Corporation shall render legal aid and assistance to those persons~~
20 ~~in Guam, who, under rules established by the Corporation, are in the greatest~~
21 ~~economic and social need of legal assistance and representation. The~~
22 ~~Corporation shall not accept fee-generating cases and shall give legal~~
23 ~~assistance in civil matters only to those who would otherwise not receive such~~
24 ~~assistance. The Corporation may apply for, receive, and administer grants,~~
25 ~~subgrants or enter into intragovernmental and intergovernmental agreements~~
26 ~~to provide legal services to elderly individuals, as defined pursuant to local or~~
27 ~~federal laws, regulations, or guidelines. The Corporation is authorized to~~

1 ~~comply with the requirements of federal grants, subgrants, and~~
2 ~~intragovernmental and intergovernmental agreements, to include~~
3 ~~representation of individuals who may qualify for services pursuant to the~~
4 ~~terms of federal grants, subgrants, and intragovernmental and~~
5 ~~intergovernmental agreements.~~

6 **§11106. Powers.**

7 ~~The Corporation has the power to do any and all things necessary to~~
8 ~~further the purposes of this Chapter and to perform the duties imposed by §§~~
9 ~~11104, 11105 and 11115.~~

10 **§11107. Board of Trustees.**

11 ~~(a) All powers vested in the Corporation, except as otherwise provided~~
12 ~~in this Chapter, shall be exercised by the Board. The Board shall consist of~~
13 ~~five (5) Trustees: the Chief Justice of the Supreme Court of Guam, who shall~~
14 ~~be Chairman; the Presiding Judge of the Superior Court of Guam who shall~~
15 ~~be Vice-Chairman; the President of the Guam Bar Association; and two (2)~~
16 ~~members appointed by the Chief Justice of the Supreme Court of Guam,~~
17 ~~whose terms shall be for three (3) years. Neither person appointed by the Chief~~
18 ~~Justice shall be the Attorney General, or a member of his staff. The Trustees~~
19 ~~shall not be employees of the Corporation.~~

20 ~~(b) Three (3) Trustees shall constitute a quorum of the Board for the~~
21 ~~transaction of all business. Subject to the provisions of the Administrative~~
22 ~~Adjudication Act, the Board may adopt rules and regulations governing the~~
23 ~~conduct of its affairs.~~

24 **§ 11108. Director.**

25 ~~The Board shall appoint a Director who shall have at least five (5) years~~
26 ~~experience in the practice of law. The Director shall be a member of the~~

1 classified service. The Director shall have the sole responsibility to carry out
2 the purposes and duties of the Corporation.

3 **§ 11109. Personnel.**

4 The Director is authorized to appoint a Deputy Director, and such other
5 personnel, and fix their duties, under and in accordance with 4 GCA, as may
6 be necessary for purposes of this Chapter.

7 **§ 11110. Employment.**

8 (a) Pursuant to the provisions of 4 GCA § 4105 the Board shall
9 establish rules and regulations governing selection, promotion, performance
10 evaluation, demotion, suspension and other disciplinary action for the
11 employees of the Corporation.

12 (b) Employees of the Corporation shall be members of the
13 Government of Guam Retirement Fund, subject to the provisions of 4 GCA §
14 8105, except that for the purposes of Subsection (a) of said Section, the
15 employees of the Corporation shall not be considered employees of a “public
16 corporation,” whereby their membership in the Fund is optional and
17 membership therein must be specifically requested. The Corporation shall
18 contribute to the Government of Guam Retirement Fund on the basis of annual
19 billings as determined by the Board of Trustees, Government of Guam
20 Retirement Fund, for the government share of the cost of the retirement
21 benefits applicable to the Corporation’s employees and their beneficiaries.
22 The Corporation shall also contribute to the Workmen’s Compensation Fund,
23 on the basis of annual billings as determined by the Workmen’s Compensation
24 Commissioner, for the benefit payments made from such Fund on account of
25 the Corporation’s employees.

26 (c) Notwithstanding any other provision of law, compensation for
27 employees of the Public Defender Service Corporation *shall* be in accordance

1 with the compensation plan set forth in the “Government of Guam
2 Competitive Wage Act of 2014” transmitted to *I Liheslaturan Guåhan* on
3 January 15, 2014, subject to appropriations from *I Liheslaturan Guåhan*.

4 **§ 11112. — Employees.**

5 The Director shall be a successor to the Public Defender of Guam. All
6 employees of the Office of the Public Defender of Guam shall be transferred
7 to the Public Defender Service Corporation.

8 Any person accepting employment under this Section shall receive not
9 less than the straight time rate of compensation he was receiving immediately
10 before the transfer date. The other employment benefits and rights, including
11 retirement and leave of such transferred employees, shall be governed by the
12 provisions of § 11110 of this Chapter.

13 **§ 11113. — Fiscal Authority Accounting; Expenditures.**

14 (a) — There is hereby established a fund to be known as the “Public
15 Defender Service Corporation Fund,” which shall be maintained by the
16 General Administrative Services of the Judicial Branch separate and apart
17 from other funds of the Government, and independent records and accounts
18 shall be maintained in connection therewith. Every quarter the financial
19 statement of the Fund shall be furnished the Guam Legislature.

20 (b) — All moneys received by the Corporation, from whatever source
21 derived, shall be deposited in said Public Defender Service Corporation Fund
22 in eligible banks as defined in § 6311 of the Government Code.

23 (c) — All expenditures shall be made from said Public Defender
24 Service Corporation Fund.

25 (d) — The Board shall adopt and maintain a uniform system of
26 accounting.

27 **§ 11113.1. — Lapses.**

1 ~~The Public Defender Service Corporation shall be allowed to carry over~~
2 ~~all lapses from fiscal year to fiscal year, beginning with Fiscal Year 2000,~~
3 ~~notwithstanding any other provisions of law, or administrative provisions in~~
4 ~~public laws setting forth each fiscal year's budget. This provision shall remain~~
5 ~~in effect in all budgets hereafter, unless specifically amended or repealed by~~
6 ~~subsequent legislation. The language, notwithstanding any other provision of~~
7 ~~law, shall not constitute a specific repeal of this provision.~~

8 ~~**§ 11114. — Transfer of Property.**~~

9 ~~There is transferred to the Corporation all items of property now~~
10 ~~assigned to the Office of the Public Defender of Guam.~~

11 ~~**§ 11115. — Federal Landtakings: Legal Aid and Assistance.**~~

12 ~~Notwithstanding the provisions of § 11105 of this Title, the Public~~
13 ~~Defender Corporation shall assist and represent in court or otherwise persons~~
14 ~~who have apparently valid claims under § 204 (relating to federal landtakings)~~
15 ~~of the Territorial Omnibus Act of 1977 (H.R. 6550). The Corporation shall~~
16 ~~render legal aid and assistance to any person who qualified under the~~
17 ~~following guidelines:~~

18 ~~(a) — A family or individual below one hundred fifty percent (150%)~~
19 ~~of the Community Service Administration's (CSA) Income Poverty~~
20 ~~Guidelines adjusted for Guam;~~

21 ~~(b) — A family or individual who is receiving welfare benefits; or~~

22 ~~(c) — A person who has been rejected, in writing, by two (2) private~~
23 ~~practicing members of the Guam Bar.~~

24 ~~**§ 11116. — Same: No Charge for Costs and Services.**~~

25 ~~The Public Defender Corporation shall not charge claimants for its~~
26 ~~general costs or services or require a claimant to repay any filing fees or other~~
27 ~~court related fees incurred in the representation of the claimant. The~~

~~Corporation may require assistance from any department or agency of the government of Guam in fulfilling its responsibility pursuant to this Chapter.~~

§ 11101. Short Title

§ 11102. Definitions

§ 11103. Establishment of The Guam Public Defender Service Corporation

§ 11104. Corporation: Powers and Duties

§ 11105. Board of Trustees: Appointments, Membership, and Terms

§ 11106. Board of Trustees: Qualifications

§ 11107. Board of Trustees: Meetings, Compensation, and Removal

§ 11108. Board of Trustees: Powers and Duties

§ 11109. Board of Trustees: Minimum Standards, Rules, and Procedures

§ 11110. Director: Appointment and Qualifications

§ 11111. Director: Powers and Duties

§ 11112. Personnel and Employment

§ 11113. Additional Authority

§ 11114. Data Collection

§ 11115. Funding

§ 11116. Annual Report

§ 11117. Federal Landtakings: Legal Aid and Assistance.

§ 11118. Same: No Charge for Costs and Services.

§ 11119. Continuity of Operations

§ 11101. Short Title. This Chapter may be cited as the Guam Public Defender Service Corporation Act of 2025.

§ 11102. Definitions.

(a) “Attorney” means a person licensed to practice law in Guam.

1 (b) “Child” or “minor” means a person less than eighteen (18) years of age
2 on the date legal proceedings are first commenced against the person.

3 (c) “Corporation” means Guam Public Defender Service Corporation.

4 (d) “Board” means the Board of Trustees of the Corporation.

5 (e) “Division” means an organized structure within the Guam Public
6 Defender Service Corporation.

7 (f) “Managing Attorney” means the head of each Guam Public Defender
8 Service Corporation division.

9 (g) “Director” means the attorney appointed by the Guam Public Defender
10 Service Corporation Board to oversee all Guam Public Defender Service
11 Corporation divisions.

12 (h) “Indigent” means a person who does not have sufficient resources to
13 retain a private attorney and pay for the necessary expenses of legal representation
14 without substantial burden or undue hardship.

15 (i) “Lawyer” means a person licensed to practice law in a jurisdiction
16 subject to the Sixth Amendment of the U.S. Constitution.

17 (j) “Public legal services” means legal representation provided to an
18 indigent person.

19 (k) “Public legal services” provider means an attorney or Division
20 providing public legal services by the Corporation.

21 **§ 11103. Establishment of The Guam Public Defender Service**
22 **Corporation.** In order to provide effective public legal services to those persons in
23 Guam, there is created a public corporation to be known as the Guam Public
24 Defender Service Corporation. The Guam Public Defender Service Corporation is
25 established as an autonomous entity within the government of Guam. Except for The
26 Supreme Court of Guam’s authority to regulate the practice of law under The
27 Organic Act of Guam, the Corporation shall have full authority to independently and

1 autonomously oversee, supervise, and control the administration, budgeting,
2 funding, jurisdiction, and delivery of all public legal services in Guam. The
3 Corporation shall exercise its statutory powers and duties independent of any other
4 branch of the government of Guam.

5 **§ 11104. Corporation: Powers and Duties.** The Corporation shall:

6 (a) Accept all appointments from the courts of Guam to provide public
7 legal services, unless all divisions have a conflict of interest, including but not
8 limited to excessive workloads. It shall be the duty of the Corporation to defend
9 indigent persons charged in criminal cases before the courts of Guam. The
10 determination of whether a defendant is indigent and whether his case is to be
11 referred to the Corporation shall be at the discretion of the judge before whom such
12 defendant is appearing. The Corporation may assist the judges of the courts of Guam
13 in ruling on cases of indigency and in establishing criteria for determining when the
14 services of the Corporation are appropriate.

15 (b) Render public legal services to those persons in Guam, who, under rules
16 established by the Corporation, are in the greatest economic and social need of legal
17 assistance and representation. The Corporation shall not accept fee-generating cases
18 and shall give legal assistance in civil matters only to those who would otherwise
19 not receive such assistance. The Corporation may apply for, receive, and administer
20 grants, subgrants or enter into intragovernmental and intergovernmental agreements
21 to provide legal services to elderly individuals or other classes of individuals in need,
22 as defined pursuant to local or federal laws, regulations, or guidelines. The
23 Corporation is authorized to comply with the requirements of federal grants,
24 subgrants, and intragovernmental and intergovernmental agreements, to include
25 representation of individuals who may qualify for services pursuant to the terms of
26 federal grants, subgrants, and intragovernmental and intergovernmental agreements.

1 (c) Apply for, receive, distribute, and administer grants, private gifts, and
2 bequests.

3 (d) Establish divisions to oversee a public legal services delivery system
4 that shall consist of, at a minimum, the following:

5 (1) Administration Division to provide for the day-to-day operations of
6 the Corporation and to provide training, human resources, technology, data
7 collection, finance, accounting, resources, communication, administrative
8 support to all other divisions, and other such duties as assigned by the
9 Director.

10 (2) Public Defender Division to provide public legal services to
11 indigent persons in criminal and/or juvenile proceedings, unless the Public
12 Defender Division has a conflict of interest, and other such duties as assigned
13 by the Director.

14 (3) Alternate Public Defender Division to provide public legal services
15 to indigent persons in criminal and/or juvenile proceedings when the Public
16 Defender Division has a conflict of interest, unless the Alternate Public
17 Defender Division has a conflict of interest, and other such duties as assigned
18 by the Director.

19 (4) Civil Law Center to provide civil legal representation to indigent
20 persons, unless the Civil Law Center has a conflict of interest. In accordance
21 to the mandates under 12 G.G.A. § 11105, the Civil Law Center shall be
22 strictly responsible for handling only matters relating to civil public legal
23 services. To avoid conflicts, the Civil Law Center shall not receive criminal
24 court appointments.

25 (5) Private Attorney Panel Division to provide public legal services to
26 indigent persons in criminal and/or juvenile proceedings who are entitled to
27 public legal services in the Superior and Supreme courts of Guam who cannot

1 be represented by any other division due to a conflict of interest. This will
2 include representation at trial, to include writs involving the protection of
3 constitutional rights. Public legal services providers and support staff
4 providing this representation shall not be employees of the Corporation. This
5 division may include a panel of investigators appointed to assist Private
6 Attorney Panel attorneys on a case by case basis. The Private Attorney Panel
7 Division shall consist of attorneys qualified by Board Policy to receive
8 appointments for the provision of public legal services when both the Public
9 Defender Division and Alternate Public Defender divisions is unable to
10 represent an indigent defendant. Such private attorneys may be retained as
11 independent contractors based upon possessing qualifications established by
12 the Board and receiving a rate of pay established by the Board. The
13 procurement of such professional legal services are exempt from procurement
14 rules.

15 (6) The Director may establish such divisions or other organizational
16 units as may be determined to be necessary for the efficient and effective
17 administration and operation of the Corporation.

18 (e) Advocate to the government of Guam for resources and policies
19 necessary to ensure effective public legal services, to include resource parity.

20 (f) Has the power to do any and all things necessary to further the purposes
21 of this Chapter and to perform the duties imposed by subsection (a) and (b).

22 (g) Has the power to sue on behalf of the Corporation, its clients, its
23 employees, or itself to enforce any rights granted to the Corporation or mandated by
24 law or granted by the Organic Act of Guam, the U.S. Constitution or the laws of
25 Guam.

26 (h) Has the power to lease, evict, or sue on behalf of the Corporation,
27 relative to the Corporation's properties, equipment, and facilities.

1 **§ 11105. Board of Trustees: Appointments, Membership, and Terms.** All
2 powers vested in the Corporation, except as otherwise provided in this Chapter, shall
3 be exercised by the Board of Trustees. The Board shall consist of seven members.
4 At least four members shall be licensed to practice law in jurisdictions that are
5 subject to the Sixth Amendment of the U.S. Constitution.

6 (a) The Board members shall be appointed as follows:

7 (1) Two members by the Chief Justice of The Supreme Court of
8 Guam, one of whom must be a lawyer.

9 (2) Two members by the Governor of Guam, one of whom is a
10 lawyer and one of whom has experience in public administration, finance
11 and/or budgeting;

12 (3) Two members by the Speaker of the Guam Legislature, one of
13 whom is a lawyer and one of whom has experience in public administration,
14 finance and/or budgeting;

15 (4) One member by the President of the Guam Bar Association, who
16 must be a lawyer.

17 (b) If any one of these entities fails to appoint, cannot appoint, or refuses
18 to appoint a Board member within thirty days of the request, the Director shall
19 appoint an acting Board member until such time as the vacancy is filled.

20 (c) The term for a Board member shall be four years. Board members shall
21 hold office until their successors are appointed and shall continue to exercise such
22 duties until a successor is appointed. Board members may serve more than one term,
23 but no more than three successive full terms. The initial terms of the members shall
24 be staggered: two members shall be appointed for a term of four years each, two
25 members shall be appointed for a term of three years each, two members shall be
26 appointed for a term of two years each, and one member shall be appointed for a
27 term of one year. Initial appointments shall be for the following terms:

1 (1) The lawyer member appointed by the Chief Justice shall serve an
2 initial term of two years.

3 (2) The member appointed by the Chief Justice shall serve an initial
4 term of four years.

5 (3) The lawyer member appointed by the Governor shall serve an
6 initial term of two years.

7 (4) The member appointed by the Governor with experience in
8 public administration, finance and/or budgeting shall serve an initial term of
9 four years.

10 (5) The lawyer member appointed by the Speaker of the Guam
11 Legislature shall serve an initial term of three years.

12 (6) The member appointed by the Speaker of the Guam Legislature
13 with experience in finance, accounting, and/or budgeting shall serve an initial
14 term of three years.

15 (7) The member appointed by the President of the Guam Bar
16 Association, shall serve an initial term of one year.

17 (d) A vacancy in the Board membership shall be filled in the same manner
18 as the original appointment.

19 (e) The Board shall initially elect two of the original Board members to
20 serve as chairperson and vice chairperson for a term of one year. At the expiration
21 of the initial year, or upon the vacancy in the membership of the appointed
22 chairperson and/or vice chairperson, the Board shall elect a chairperson and vice
23 chairperson from its membership to serve a two-year term. A member shall not serve
24 as chairperson and vice chairperson of the Board for more than three successive full
25 terms.

26 **§ 11106. Board of Trustees: Qualifications.**

27 (a) A person appointed to the Board shall have:

1 (1) significant experience in the legal representation of criminal,
2 juvenile or civil cases; or

3 (2) a demonstrated commitment to quality public legal services.

4 (b) No person shall be appointed to, or serve on, the Board who is a:

5 (1) current justice, judge, judicial officer, Guam Bar Association
6 Officer, or employee thereof;

7 (2) current prosecutor, law enforcement official, or employee
8 thereof;

9 (3) current elected Senator, public legal services provider or
10 employee of the Corporation; or

11 (4) current contractor with, or recipient of funding from, the
12 Corporation, Office of the Attorney General (OAG), or employee thereof.

13 (c) Lawyer members may be from off-island jurisdictions that are subject
14 to the Sixth Amendment of the United States Constitution. Lawyer members may
15 be retired judicial officers, inactive attorneys, and retired attorneys who resigned in
16 good standing.

17 **§ 11107. Board of Trustees: Meetings, Compensation, and Removal.**

18 (a) No less than four Board members shall constitute a quorum at a meeting
19 of the Board of Trustees. No less than four Board members must vote in favor for a
20 motion to pass. The Board shall hold monthly meetings for the first two years and
21 hold quarterly meetings thereafter, unless more frequent meetings are warranted.
22 Board meetings shall be open to the public. Board meetings may be held virtually so
23 long as there is opportunity for meaningful public participation and pursuant to
24 Guam law.

25 (b) Board members shall receive a stipend as authorized under Guam law
26 for board members.

1 (c) The majority of the Board may remove a member for cause. Grounds
2 for removal and procedure shall be set forth in the bylaws.

3 **§ 11108. Board of Trustees: Powers and Duties.** The Board of Trustees
4 shall:

5 (a) Establish standards governing effective public legal services in Guam.
6 Such standards shall be designed to ensure public legal services meet constitutional
7 requirements required under The Organic Act of Guam, the laws of Guam, the
8 United States Constitution, and industry best practices.

9 (b) Establish a formal indigency determination standard to assess a
10 person's eligibility to receive public legal services. The indigency determination
11 shall be periodically reviewed so that the standard reflects the current state of
12 Guam's economy. In establishing a formal indigency determination standard, the
13 Board shall:

14 (1) Determine the prevailing rate for retaining a private defense
15 attorney in Guam;

16 (2) Establish a presumption of indigency, whereby a person is
17 automatically presumed indigent in certain situations, including but not
18 limited to a person who is incarcerated; a person in a mental health, substance
19 abuse, or any other type of residential or treatment facility; a person who is
20 unemployed; a person who is the recipient of any type of public assistance at
21 the time of the indigency determination; or a person who is a minor; and

22 (3) Consider the person's dependents, income, and other factors for
23 the court to make a fair and efficient determination of a person's indigency.

24 (c) Appoint the Director to oversee all Corporation divisions.

25 (d) Conduct an annual performance evaluation for the Director.

26 (e) Establish minimum qualifications for each division Managing
27 Attorney.

1 (f) Approve, modify, and/or disapprove budget requests from the Director
2 and submit financial and budgetary requests and reports to the judiciary, legislature,
3 and/or governor as required by law.

4 (g) Adopt such policies and procedures as may be necessary to carry out
5 the Board's powers and duties, including adopting bylaws to govern the Corporation
6 and all divisions within the Corporation.

7 (h) Adopt policy and rules for the operation of the Corporation, including
8 but not limited to, personnel, procurement, facilities and property, financial and
9 travel.

10 **§ 11109. Board of Trustees: Minimum Standards, Rules, and Procedures.**

11 The Board of Trustees shall promulgate and implement minimum standards, rules,
12 and procedures to guarantee indigent persons effective assistance of counsel as
13 provided under The Organic Act of Guam, the laws of Guam, and the United States
14 Constitution. The minimum standards, rules, and procedures shall apply to all public
15 legal services providers. Such standards, rules, and procedures, shall be guided by
16 the following principles:

17 (a) The delivery of public legal services shall be independent of judicial
18 and political influence.

19 (b) Public legal services providers' ability, training, and experience shall
20 match the nature and complexity of the case appointed.

21 (c) Public legal services providers shall attend initial and annual training
22 relevant to the types of cases on which they provide representation.

23 (d) Public legal services providers' workloads shall be controlled to permit
24 sufficient time and resources to represent every indigent client. Procedures shall be
25 established for the Corporation to decline cases due to excessive workload.

1 (e) Public legal services providers shall be appointed immediately after
2 arrest, detention, or upon request and shall confer with their client prior to the next
3 court appearance.

4 (f) Waiver of the right to counsel shall not be coerced or encouraged.
5 Before a person may waive counsel, they must be provided a meaningful opportunity
6 to confer with a public legal services provider.

7 (g) Barring conflicts of interest, the same public legal services provider or
8 Division shall continuously represent and personally appear at every court
9 appearance throughout the pendency of the case.

10 (h) Each indigent person shall receive a public legal services provider who
11 is free of conflicts of interest as early as possible in the case.

12 (i) Public legal services providers shall be provided space where attorney-
13 client confidentiality is safeguarded for meetings with clients.

14 (j) Public legal services providers shall be compensated at a rate that does
15 not discourage, disincentivize, or impair the provider's ability to provide effective
16 representation. No public legal services provider shall be paid a flat fee in exchange
17 for legal representation services. Government employed public legal services
18 providers shall be compensated at a rate comparable to other publicly funded
19 attorneys and should not be compensated less than prosecutors. Private attorneys
20 should be paid at a rate that reflects the cost of overhead and other office expenses,
21 as well as payment for work.

22 (k) Public legal services providers shall have clear procedures for obtaining
23 experts, investigators, social workers, interpreters, secretaries, paralegals, and
24 resources for cases that do not discourage, disincentivize, or impair the provider's
25 ability to provide effective representation.

26 (l) Public legal services providers shall be systematically reviewed for
27 effective representation according to the Corporation's standards.

1 (m) Public legal services providers shall provide requested data to the
2 Corporation.

3 **§ 11110. Director: Appointment and Qualifications.** The Board shall
4 appoint the Director, who shall head and oversee the operation of all Corporation
5 divisions.

6 (a) The Director shall directly supervise the administrative division and
7 shall supervise the other divisions through the Managing Attorneys.

8 (b) The Director shall be appointed by approval of five Board members and
9 for a term of office of four years, which can be renewed.

10 (c) The Director may be removed by the Board in its discretion.

11 (d) The Director shall be an unclassified position. If the Director is
12 appointed from among the classified employees of the Government, upon the
13 termination of the appointment as Director, the former Director may return to the
14 classified position held previously as provided for in the personnel rules of the
15 Corporation.

16 (e) The Director shall be an attorney with the following minimum
17 qualifications:

18 (1) Licensed to practice law in Guam;

19 (2) Five years of legal experience in public legal services in criminal
20 or juvenile delinquency cases, at the trial or appellate level;

21 (3) Commitment to ensuring effective public legal services to all
22 indigent persons in Guam; and

23 (4) Experience in management, or with the legislative process.

24 (f) The Director shall be full-time and devote their entire time during
25 ordinary business hours to their duties. The Director shall neither directly nor
26 indirectly engage in the private practice of law.

1 **§ 11111. Director: Powers and Duties.** The Director shall have the sole
2 responsibility to carry out the purposes and duties of the Corporation and ensure that
3 each division fulfills its statutory duty, including but not limited to:

4 (a) Appointing a Deputy Director, and such other personnel, and fix their
5 duties, under and in accordance with 4 GCA, as may be necessary for the purposes
6 of this Chapter.

7 (b) Appointing the managing attorney of each Corporation division.

8 (c) Hiring the necessary attorney, professional, technical, and support staff
9 for each division to accomplish the division's statutory duties.

10 (d) Determining and implementing the method for delivering public legal
11 services by utilizing government-employed public defenders and private attorneys.

12 (e) Requiring and receiving monthly financial reporting from each
13 division, including assets, liabilities, receipts, and expenditures.

14 (f) Collecting and analyzing data from all divisions.

15 (g) Requesting proposed budgets from each division, to propose a
16 comprehensive budget for each division to the Board of Trustees.

17 (h) Proposing budgets and policies to the Board of Trustees.

18 (i) Distributing legislative appropriations to each division.

19 (j) Assisting the Board in developing standards.

20 (k) Investigating, auditing, and reviewing the operation of all public legal
21 services to ensure compliance with the Board of Trustees' standards, rules, and
22 procedures.

23 (l) Identifying and implementing a system of performance metrics to
24 assess compliance with Board standards.

25 (m) Establishing procedures for clients, judges, and prosecutors to
26 communicate concerns and/or needs regarding the provision of public legal services,
27 and procedures for the Corporation to respond.

1 (n) Establishing procedures for monitoring, and responding to, client
2 complaints on an ongoing basis.

3 (o) Providing training and support to all public legal services providers.

4 (p) Submitting an Annual Report to the Board of Trustees.

5 **§ 11112. Personnel and Employment.**

6 (a) Pursuant to the provisions of 4 GCA § 4105, the Board shall establish
7 rules and regulations governing selection, promotion, performance evaluation,
8 demotion, suspension and other disciplinary action for the employees of the
9 Corporation.

10 (b) Employees of the Corporation shall be in the classified service unless
11 otherwise authorized by law. Employees of the Corporation shall be members of the
12 Government of Guam Retirement Fund, subject to the provisions of 4 GCA § 8105,
13 except that for the purposes of Subsection (a) of said Section, the employees of the
14 Corporation shall not be considered employees of a “public corporation,” whereby
15 their membership in the Fund is optional and membership therein must be
16 specifically requested. The Corporation shall contribute to the Government of Guam
17 Retirement Fund on the basis of annual billings, as determined by the Board of
18 Trustees of the Government of Guam Retirement Fund, for the government share of
19 the cost of the retirement benefits applicable to the Corporation’s employees and
20 their beneficiaries. The Corporation shall also contribute to the Workmen’s
21 Compensation Fund, on the basis of annual billings, as determined by the
22 Workmen’s Compensation Commission, for the benefit payments made from such
23 Fund on account of the Corporation’s employees.

24 (c) Notwithstanding any other provision of law, compensation for
25 employees of the Corporation shall be in accordance with the compensation plan set
26 forth in the “Government of Guam Competitive Wage Act of 2014 as amended by
27 the 2024 Updated Attorney Pay Plan, General Pay Plan, and Law Enforcement Pay

1 Plan,” subject to appropriations, unless modified by the Board pursuant to Title 4
2 GCA §6302.

3 (d) The attorneys employed by the Corporation may practice before the
4 courts of Guam on the same basis as other government attorneys pursuant to the
5 Guam Rules Governing Admission to the Practice of Law.

6 **§ 11113. Additional Authority.** The Corporation may require assistance from
7 any department or agency of the government of Guam in fulfilling its responsibility
8 pursuant to this chapter, including but not limited to waiving any fees or costs for
9 services involving the representation of indigent clients.

10 **§ 11114. Data Collection.** The Corporation shall, at a minimum, collect and
11 regularly review data related to:

12 (a) Public legal services providers’ workloads that detail the number of
13 cases, by case type, open at the start of the month; newly opened cases during the
14 month; closed cases during the month; and open cases at the end of the month. Data
15 shall be provided for each division as a whole and for each attorney providing
16 representation within a division;

17 (b) The time public legal services providers devote to providing
18 representation in individual cases, and the time devoted to non-case-related work;

19 (c) The use of investigators, experts, social workers and other support
20 services;

21 (d) Major case events;

22 (e) Case outcomes;

23 (f) Monetary expenditures;

24 (g) Clients’ race, ethnicity and gender;

25 (h) Persons waiving public legal services, persons seeking public legal
26 services, persons denied public legal services, and persons denied public legal
27 services who proceed in their case without counsel or with retained counsel; and

1 (i) All other data necessary to ensure effective public legal services in
2 Guam.

3 **§ 11115. Funding.** The Corporation shall be funded to ensure effective public
4 legal services are provided as required by The Organic Act of Guam, the laws of
5 Guam, and the United States Constitution.

6 (a) There is hereby established a fund to be known as the “Public Defender
7 Service Corporation Fund,” which shall be maintained by the Administration
8 Division separate and apart from other funds of the Government, and independent
9 records and accounts shall be maintained in connection therewith. Every quarter, the
10 financial statement of the Public Defender Service Corporation Fund shall be
11 furnished to the Guam Legislature.

12 (b) All moneys received by the Corporation, from whatever source derived,
13 including local appropriation or grant, federal appropriation or grant, private gifts,
14 bequests, and donations, shall be deposited in the Public Defender Service
15 Corporation Fund. The Corporation shall be allowed to carry over all lapses from
16 fiscal year to fiscal year, notwithstanding any other provision of law, or
17 administrative provision in public laws setting forth each fiscal year’s budget. This
18 provision shall remain in effect in all budgets hereafter, unless specifically amended
19 or repealed by subsequent legislation.

20 (c) All expenditures for the Corporation and its divisions shall be made
21 from the Public Defender Service Corporation Fund.

22 (d) The Corporation shall adopt and maintain a uniform system of
23 accounting.

24 **§ 11116. Annual Report.** The Corporation shall submit an annual report,
25 which shall be public, to the Governor, Legislature, and The Supreme Court of
26 Guam. The annual report must include, but not be limited to, data on operations,
27 expenditures, revenues, and compliance with the Corporation’s standards.

1 **§ 11117. Federal Landtakings: Legal Aid and Assistance.** Notwithstanding
2 the provisions of § 11104(b) of this Title, the Public Defender Corporation shall
3 assist and represent in court or otherwise persons who have apparently valid claims
4 under §204 (relating to federal landtakings) of the Territorial Omnibus 7 Act of 1977
5 (H.R. 6550). The Corporation shall render legal aid and assistance to any person who
6 qualifies under the following guidelines:

7 (a) A family or individual below one hundred fifty percent (150%) of the
8 Community Service Administration’s (CSA) Income Poverty Guidelines adjusted
9 for Guam;

10 (b) A family or individual who is receiving welfare benefits; or (c) A person
11 who has been rejected, in writing, by two (2) private practicing members of the
12 Guam Bar.

13 **§ 11118. Same: No Charge for Costs and Services.** The Guam Public
14 Defender Corporation shall not charge claimants for its general costs or services or
15 require a claimant to repay any filing fees or other court related fees incurred in the
16 representation of the claimant. The Corporation may require assistance from any
17 department or agency of the government of Guam in fulfilling its responsibility
18 pursuant to this Chapter.

19 **§ 11119. Continuity of Operations.**

20 The Guam Public Defender Service Corporation shall be the successor to the
21 Public Defender Service Corporation. Wherever, Guam law, rule or regulation
22 refers to the Public Defender Service Corporation, such references shall be changed
23 to the Guam Public Defender Service Corporation.”

24 **Section 3.** § 45.30(b) of Chapter 45, Title 8, Guam Code Annotated is hereby
25 *amended* to read:

26 “(b) If the defendant appears without counsel, the court shall ask him if he
27 desires the assistance of counsel. If he desires counsel, the court shall inquire of him

1 whether he is financially able to employ counsel and, if so, whether he desires to
2 employ counsel of his choice or to have counsel assigned to him ~~at his own expense~~
3 through the Guam Public Defender Service Corporation. If he desires assignment of
4 counsel, the court shall make such assignment. The court shall assign counsel at
5 public expense if the defendant desires counsel and is financially unable to employ
6 counsel.”

7 **Section 4.** § 45.40 of Chapter 45, Title 8, Guam Code Annotated is hereby
8 *amended* to read:

9 “**§45.40.** In any criminal action in which a defendant is entitled to be
10 represented by counsel at public expense and ~~the court finds that~~ because of conflict
11 of interest or other reason that the public defender has properly refused to represent
12 the defendant, the ~~court~~ Private Attorney Panel Division of the Guam Public
13 Defender Service Corporation shall appoint private counsel for the defendant who
14 shall receive a reasonable compensation and necessary expenses to be paid by the
15 Guam Public Defender Service Corporation subject to appropriation. ~~and order that~~
16 ~~counsel receive a reasonable sum for compensation and necessary expenses to be~~
17 ~~paid by the Treasurer of the Territory.”~~

18 **Section 5. Transfer.** Effective October 1, 2025, the following shall be
19 transferred from the Public Defender Service Corporation to the Guam Public
20 Defender Service Corporation:

21 (a) All moneys in the Public Defender Service Corporation Fund.

22 (b) All employees of the Public Defender Service Corporation. Any person
23 accepting employment under this Section shall receive not less than the straight-time
24 rate of compensation he was receiving immediately before the transfer date. The
25 other employment benefits and rights, including retirement and leave of such
26 transferred employees, shall be governed by the provisions of 12 GCA § 11112.

27 (d) All property of the Public Defender Service Corporation.

1 **Section 6. Effective Date.** This Act shall become effective on October 1,
2 2025.

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 97-38 (LS)

As Amended by the Committee on Economic Investment,
Military Buildup, Regional Relations, Technology,
Regulatory Affairs, Justice, Elections, and Retirement

Introduced by:

Frank F. Blas, Jr.
Telo T. Taitague

**AN ACT TO *REPEAL* AND *REENACT* CHAPTER 11 OF
TITLE 12, GUAM CODE ANNOTATED; AND TO *AMEND*
§45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM
CODE ANNOTATED; RELATIVE TO THE
REORGANIZATION OF THE PUBLIC DEFENDER
SERVICE CORPORATION TO PROVIDE EFFECTIVE
LEGAL AID AND SERVICES TO PERSONS WHO ARE
ENTITLED TO COUNSEL UNDER THE ORGANIC ACT
OF GUAM, THE LAWS OF GUAM, AND THE UNITED
STATES CONSTITUTION AND TO CITE THIS ACT AS
THE “PUBLIC DEFENDER SERVICE CORPORATION
ACT OF 2025.”**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds
that the right to counsel is a fundamental guarantee under the Organic Act of Guam
and the Sixth Amendment to the United States Constitution. This right obligates
Guam to ensure effective assistance of counsel to indigent individuals facing a
potential loss of liberty.

I Liheslaturan Guåhan further finds under Guam law, the Public Defender
Services Corporation (PDSC) administers the majority of adult and juvenile trial and

1 appellate representation throughout Guam. In this system, primary representation is
2 provided by public defenders from the PDSC division, while secondary
3 representation is administered by the Alternate Public Defender (APD) division.
4 Tertiary representation is provided by a Private Attorney Panel appointed by the
5 Judiciary and compensated on an hourly basis. In cases where no panel attorney is
6 available, judges have the authority to appoint a licensed attorney to ensure
7 representation.

8 *I Liheslaturan Guåhan* further finds that a March 2024 evaluation by the Sixth
9 Amendment Center identified challenges in achieving full independence for Guam’s
10 indigent defense system, which is essential to ensuring effective representation and
11 public confidence in the justice system. The report highlighted the need for an
12 independent governance structure to oversee indigent defense services, addressing
13 key areas such as attorney qualifications, supervision, and resource allocation.

14 *I Liheslaturan Guåhan* further finds that for years, the Judiciary of Guam has
15 overseen and provided administrative support for the operations of the Private
16 Attorney Panel. While the Judiciary’s leadership has been necessary to ensure the
17 right to counsel during the early development of indigent defense, *I Liheslatura*
18 recognizes the importance of establishing independence to prevent undue influence
19 from any single branch of government, improving the delivery of justice and
20 upholding constitutional rights.

21 It is therefore the intent of *I Liheslaturan Guåhan* that the Public Defender
22 Service Corporation shall manage the island’s public legal services delivery system.
23 This corporation will oversee all indigent defense services on Guam, including, at
24 minimum, a public defender division, an alternate public defender division, a civil
25 legal services division, and a private attorney panel. The corporation will further
26 have the authority to promulgate and enforce standards for indigent defense, collect

1 and analyze data, and allocate resources to maintain effective and equitable
2 representation.

3 *I Liheslaturan Guåhan* further intends to appropriate funds directly to the
4 Guam Public Defender Service Corporation and maintain continued funding from
5 the Judicial Client Service Fund pursuant to § 9602 of Chapter 9.6, Title 7, Guam
6 Code Annotated, ensuring a reliable and stable funding source.

7 Through this legislation, *I Liheslaturan Guåhan* reaffirms its commitment to
8 protecting the constitutional rights of all residents.

9 **Section 2.** Chapter 11 of Title 12, Guam Code Annotated is hereby *repealed*
10 and *reenacted* to read:

11 **“Chapter 11**

12 **Guam Public Defender Service Corporation Act**

13 ~~§ 11101. — Short Title.~~

14 ~~§ 11102. — Definitions.~~

15 ~~§ 11103. — Establishment.~~

16 ~~§ 11104. — Duties: Criminal Cases.~~

17 ~~§ 11104.1. — Public Defender Assistance in Connection with Recovery~~
18 ~~and Probate of Land Claims Awards.~~

19 ~~§ 11105. — Same: Civil Matters.~~

20 ~~§ 11106. — Powers.~~

21 ~~§ 11107. — Board of Trustees.~~

22 ~~§ 11108. — Director.~~

23 ~~§ 11109. — Personnel.~~

24 ~~§ 11110. — Employment.~~

25 ~~§ 11111. — Attorneys.~~

26 ~~§ 11112. — Employees.~~

27 ~~§ 11113. — Fiscal Authority Accounting; Expenditures.~~

1 ~~§ 11113.1. Lapses.~~

2 ~~§ 11114. Transfer of Property.~~

3 ~~§ 11115. Federal Landtakings: Legal Aid and Assistance.~~

4 ~~§ 11116. Same: No Charge for Costs and Services.~~

5 **§ 11101. Short Title.**

6 This Chapter may be cited as the *Public Defender Service Corporation*
7 ~~Act of 1975.~~

8 **§ 11102. Definitions.**

9 (a) ~~Corporation~~ means the Public Defender Service Corporation.

10 (b) ~~Board~~ means the Board of Trustees of the Public Defender
11 Service Corporation.

12 (c) ~~Director~~ means the Director of the Public Defender Service
13 Corporation.

14 **§ 11103. Establishment.**

15 In order to provide effective legal aid and assistance to those persons in
16 Guam who are unable to afford counsel, there is created a public corporation
17 to be known as Public Defender Service Corporation.

18 **§ 11104. Duties: Criminal Cases.**

19 It shall be the duty of the Corporation to defend indigent persons
20 charged in criminal cases before the courts of Guam. The determination of
21 whether a defendant is indigent and whether his case is to be referred to the
22 Corporation shall be at the discretion of the judge before whom such
23 defendant is appearing. The Corporation may assist the judges of the courts
24 of Guam in determining when the services of the Corporation are appropriate.

25 **§ 11104.1. Public Defender Assistance in Connection with Recovery and**
26 **Probate of Land Claims Awards.**

1 ~~The Public Defender is authorized to provide legal services in~~
2 ~~connection with the recovery of settlement shares and probate administration~~
3 ~~of land claims awards, to persons who are unable to obtain the legal services~~
4 ~~of a private attorney. No such services shall be provided unless the applicant~~
5 ~~therefor shall have produced proof, in form and substance approved by the~~
6 ~~Public Defender, that no less than three (3) private attorneys have declined to~~
7 ~~provide the requested services. The Public Defender shall not, in any event,~~
8 ~~represented any person who opposes or objects to, or who intends to oppose~~
9 ~~or object to, an application for payment of a settlement share, a petition for~~
10 ~~letters of administration or for preliminary or final distribution, or a petition~~
11 ~~pursuant to § 4906 of Title 15 of the Guam Code Annotated, the subject of~~
12 ~~which is a land claims award.~~

13 **§ 11105. Same: Civil Matters.**

14 ~~The Corporation shall render legal aid and assistance to those persons~~
15 ~~in Guam, who, under rules established by the Corporation, are in the greatest~~
16 ~~economic and social need of legal assistance and representation. The~~
17 ~~Corporation shall not accept fee-generating cases and shall give legal~~
18 ~~assistance in civil matters only to those who would otherwise not receive such~~
19 ~~assistance. The Corporation may apply for, receive, and administer grants,~~
20 ~~subgrants or enter into intragovernmental and intergovernmental agreements~~
21 ~~to provide legal services to elderly individuals, as defined pursuant to local or~~
22 ~~federal laws, regulations, or guidelines. The Corporation is authorized to~~
23 ~~comply with the requirements of federal grants, subgrants, and~~
24 ~~intragovernmental and intergovernmental agreements, to include~~
25 ~~representation of individuals who may qualify for services pursuant to the~~
26 ~~terms of federal grants, subgrants, and intragovernmental and~~
27 ~~intergovernmental agreements.~~

1 **§11106.——Powers.**

2 The Corporation has the power to do any and all things necessary to
3 further the purposes of this Chapter and to perform the duties imposed by §§
4 11104, 11105 and 11115.

5 **§11107.——Board of Trustees.**

6 (a) All powers vested in the Corporation, except as otherwise provided
7 in this Chapter, shall be exercised by the Board. The Board shall consist of
8 five (5) Trustees: the Chief Justice of the Supreme Court of Guam, who shall
9 be Chairman; the Presiding Judge of the Superior Court of Guam who shall
10 be Vice Chairman; the President of the Guam Bar Association; and two (2)
11 members appointed by the Chief Justice of the Supreme Court of Guam,
12 whose terms shall be for three (3) years. Neither person appointed by the Chief
13 Justice shall be the Attorney General, or a member of his staff. The Trustees
14 shall not be employees of the Corporation.

15 (b) Three (3) Trustees shall constitute a quorum of the Board for the
16 transaction of all business. Subject to the provisions of the Administrative
17 Adjudication Act, the Board may adopt rules and regulations governing the
18 conduct of its affairs.

19 **§ 11108.——Director.**

20 The Board shall appoint a Director who shall have at least five (5) years
21 experience in the practice of law. The Director shall be a member of the
22 classified service. The Director shall have the sole responsibility to carry out
23 the purposes and duties of the Corporation.

24 **§ 11109.——Personnel.**

25 The Director is authorized to appoint a Deputy Director, and such other
26 personnel, and fix their duties, under and in accordance with 4 GCA, as may
27 be necessary for purposes of this Chapter.

1 **§ 11110. — Employment.**

2 ~~(a) Pursuant to the provisions of 4 GCA § 4105 the Board shall~~
3 ~~establish rules and regulations governing selection, promotion, performance~~
4 ~~evaluation, demotion, suspension and other disciplinary action for the~~
5 ~~employees of the Corporation.~~

6 ~~(b) Employees of the Corporation shall be members of the~~
7 ~~Government of Guam Retirement Fund, subject to the provisions of 4 GCA §~~
8 ~~8105, except that for the purposes of Subsection (a) of said Section, the~~
9 ~~employees of the Corporation shall not be considered employees of a “public~~
10 ~~corporation,” whereby their membership in the Fund is optional and~~
11 ~~membership therein must be specifically requested. The Corporation shall~~
12 ~~contribute to the Government of Guam Retirement Fund on the basis of annual~~
13 ~~billings as determined by the Board of Trustees, Government of Guam~~
14 ~~Retirement Fund, for the government share of the cost of the retirement~~
15 ~~benefits applicable to the Corporation’s employees and their beneficiaries.~~
16 ~~The Corporation shall also contribute to the Workmen’s Compensation Fund,~~
17 ~~on the basis of annual billings as determined by the Workmen’s Compensation~~
18 ~~Commissioner, for the benefit payments made from such Fund on account of~~
19 ~~the Corporation’s employees.~~

20 ~~(c) Notwithstanding any other provision of law, compensation for~~
21 ~~employees of the Public Defender Service Corporation shall be in accordance~~
22 ~~with the compensation plan set forth in the “Government of Guam~~
23 ~~Competitive Wage Act of 2014” transmitted to I Liheslaturan Guåhan on~~
24 ~~January 15, 2014, subject to appropriations from I Liheslaturan Guåhan.~~

25 **§ 11112. — Employees.**

1 ~~The Director shall be a successor to the Public Defender of Guam. All~~
2 ~~employees of the Office of the Public Defender of Guam shall be transferred~~
3 ~~to the Public Defender Service Corporation.~~

4 ~~Any person accepting employment under this Section shall receive not~~
5 ~~less than the straight time rate of compensation he was receiving immediately~~
6 ~~before the transfer date. The other employment benefits and rights, including~~
7 ~~retirement and leave of such transferred employees, shall be governed by the~~
8 ~~provisions of § 11110 of this Chapter.~~

9 **§ 11113. Fiscal Authority Accounting; Expenditures.**

10 ~~(a) — There is hereby established a fund to be known as the “Public~~
11 ~~Defender Service Corporation Fund,” which shall be maintained by the~~
12 ~~General Administrative Services of the Judicial Branch separate and apart~~
13 ~~from other funds of the Government, and independent records and accounts~~
14 ~~shall be maintained in connection therewith. Every quarter the financial~~
15 ~~statement of the Fund shall be furnished the Guam Legislature.~~

16 ~~(b) — All moneys received by the Corporation, from whatever source~~
17 ~~derived, shall be deposited in said Public Defender Service Corporation Fund~~
18 ~~in eligible banks as defined in § 6311 of the Government Code.~~

19 ~~(c) — All expenditures shall be made from said Public Defender~~
20 ~~Service Corporation Fund.~~

21 ~~(d) — The Board shall adopt and maintain a uniform system of~~
22 ~~accounting.~~

23 **§ 11113.1. Lapses.**

24 ~~The Public Defender Service Corporation shall be allowed to carry over~~
25 ~~all lapses from fiscal year to fiscal year, beginning with Fiscal Year 2000,~~
26 ~~notwithstanding any other provisions of law, or administrative provisions in~~
27 ~~public laws setting forth each fiscal year’s budget. This provision shall remain~~

1 in effect in all budgets hereafter, unless specifically amended or repealed by
2 subsequent legislation. The language, notwithstanding any other provision of
3 law, shall not constitute a specific repeal of this provision.

4 **§ 11114. — Transfer of Property.**

5 There is transferred to the Corporation all items of property now
6 assigned to the Office of the Public Defender of Guam.

7 **§ 11115. — Federal Landtakings: Legal Aid and Assistance.**

8 Notwithstanding the provisions of § 11105 of this Title, the Public
9 Defender Corporation shall assist and represent in court or otherwise persons
10 who have apparently valid claims under § 204 (relating to federal landtakings)
11 of the Territorial Omnibus Act of 1977 (H.R. 6550). The Corporation shall
12 render legal aid and assistance to any person who qualified under the
13 following guidelines:

14 (a) — A family or individual below one hundred fifty percent (150%)
15 of the Community Service Administration's (CSA) Income Poverty
16 Guidelines adjusted for Guam;

17 (b) — A family or individual who is receiving welfare benefits; or

18 (c) — A person who has been rejected, in writing, by two (2) private
19 practicing members of the Guam Bar.

20 **§ 11116. — Same: No Charge for Costs and Services.**

21 The Public Defender Corporation shall not charge claimants for its
22 general costs or services or require a claimant to repay any filing fees or other
23 court related fees incurred in the representation of the claimant. The
24 Corporation may require assistance from any department or agency of the
25 government of Guam in fulfilling its responsibility pursuant to this Chapter.

26 § 11101. Short Title

27 § 11102. Definitions

1 § 11103. Establishment of The Public Defender Service Corporation
2 § 11104. Corporation: Powers and Duties
3 § 11105. Board of Trustees: Appointments, Membership, and Terms
4 § 11106. Board of Trustees: Qualifications
5 § 11107. Board of Trustees: Meetings, Compensation, and Removal
6 § 11108. Board of Trustees: Powers and Duties
7 § 11109. Board of Trustees: Minimum Standards, Rules, and Procedures
8 § 11110. Director: Appointment and Qualifications
9 § 11111. Director: Powers and Duties
10 § 11112. Personnel and Employment
11 § 11113. Additional Authority
12 § 11114. Data Collection
13 § 11115. Funding
14 § 11116. Annual Report
15 § 11117. Federal Landtakings: Legal Aid and Assistance.
16 § 11118. Same: No Charge for Costs and Services.
17 § 11119. Continuity of Operations
18 **§ 11101. Short Title.** This Chapter may be cited as the Public Defender
19 Service Corporation Act of 2025.
20 **§ 11102. Definitions.**
21 (a) “Attorney” means a person licensed to practice law in Guam.
22 (b) “Child” or “minor” means a person less than eighteen (18) years of age
23 on the date legal proceedings are first commenced against the person.
24 (c) “Corporation” means Public Defender Service Corporation.
25 (d) “Board” means the Board of Trustees of the Corporation.
26 (e) “Division” means an organized structure within the Public Defender
27 Service Corporation.

1 (f) “Managing Attorney” means the head of each Public Defender Service
2 Corporation division.

3 (g) “Director” means the attorney appointed by the Public Defender
4 Service Corporation Board to oversee all Public Defender Service Corporation
5 divisions.

6 (h) “Indigent” means a person who does not have sufficient resources to
7 retain a private attorney and pay for the necessary expenses of legal representation
8 without substantial burden or undue hardship.

9 (i) “Lawyer” means a person licensed to practice law in a jurisdiction
10 subject to the Sixth Amendment of the U.S. Constitution.

11 (j) “Public legal services” means legal representation provided to an
12 indigent person.

13 (k) “Public legal services” provider means an attorney or Division
14 providing public legal services by the Corporation.

15 **§ 11103. Establishment of The Public Defender Service Corporation.** In
16 order to provide effective public legal services to those persons in Guam, there is
17 created a public corporation to be known as the Public Defender Service
18 Corporation. The Public Defender Service Corporation is established as an
19 autonomous entity within the government of Guam. Subject to the Supreme Court
20 of Guam and Guam Legislature’s inherent, statutory, and Organic Act authority, the
21 Corporation shall have authority to oversee, supervise, administer and budget for
22 public legal services in Guam.

23 **§ 11104. Corporation: Powers and Duties.** The Corporation shall:

24 (a) Accept all appointments from the courts of Guam to provide indigent
25 defense, and legal services, unless all divisions have a conflict of interest, or
26 excessive workloads. It shall be the duty of the Corporation to defend indigent
27 persons charged in criminal cases before the courts of Guam. The determination of

1 whether a defendant is indigent and whether the case is to be referred to the
2 Corporation shall be at the discretion of the judge before whom such defendant is
3 appearing. The Corporation may assist the judges of the courts of Guam in ruling on
4 cases of indigency and in establishing criteria for determining when the services of
5 the Corporation are appropriate.

6 (b) Render civil legal services to those persons in Guam, who, under rules
7 established by the Corporation, are in the greatest economic and social need of legal
8 assistance and representation, subject to the availability of funds. The Corporation
9 shall not accept fee-generating cases and shall give legal assistance in civil matters
10 only to those who would otherwise not receive such assistance. The Corporation
11 may apply for, receive, and administer grants, subgrants or enter into
12 intragovernmental and intergovernmental agreements to provide legal services to
13 elderly individuals or other classes of individuals in need, as defined pursuant to
14 local or federal laws, regulations, or guidelines. The Corporation is authorized to
15 comply with the requirements of federal grants, subgrants, and intragovernmental
16 and intergovernmental agreements, to include representation of individuals who may
17 qualify for services pursuant to the terms of federal grants, subgrants, and
18 intragovernmental and intergovernmental agreements.

19 (c) Apply for, receive, distribute, and administer grants.

20 (d) Establish divisions to oversee a public legal services delivery system
21 that shall consist of, at a minimum, the following:

22 (1) Administration Division to provide for the day-to-day operations of
23 the Corporation and to provide training, human resources, technology, data
24 collection, finance, accounting, resources, communication, administrative
25 support to all other divisions, and other such duties as assigned by the
26 Director.

1 (2) Public Defender Division to provide public legal services to
2 indigent persons in criminal and juvenile proceedings, including Petitions for
3 Persons in Need of Services, appeals therefrom, and in writ proceedings
4 involving the protection of constitutional rights, when those persons are
5 entitled to public legal services in the Superior Court of Guam, unless the
6 Public Defender Division has a conflict of interest, and other such duties as
7 assigned by the Director.

8 (3) Alternate Public Defender Division to provide public legal services
9 to indigent persons in criminal and juvenile proceedings when the Public
10 Defender Division has a conflict of interest, unless the Alternate Public
11 Defender Division has a conflict of interest, and other such duties as assigned
12 by the Director.

13 (4) Civil Law Division to provide civil legal representation to indigent
14 persons, unless the Civil Law Center has a conflict of interest. In accordance
15 to the mandates under 12 G.C.A. § 11105, the Civil Law Center shall be
16 strictly responsible for handling only matters relating to civil public legal
17 services. To avoid conflicts, the Civil Law Center shall not receive criminal
18 court appointments.

19 (5) Private Attorney Panel Division to provide public legal services to
20 indigent persons in criminal and juvenile cases, including Petitions for
21 Persons in Need of Services, appeals therefrom, and in writ proceedings
22 involving the protection of constitutional rights, when those persons are
23 entitled to public legal services in the Superior and Supreme courts of Guam
24 who cannot be represented by any other division due to a conflict of interest.
25 Private Attorney Panel providers and support staff providing this
26 representation shall not be employees of the Corporation. This division may
27 include a panel of investigators appointed to assist Private Attorney Panel

1 attorneys on a case by case basis. The Private Attorney Panel Division shall
2 consist of attorneys qualified by Board Policy to receive appointments for the
3 provision of public legal services when both the Public Defender Division and
4 Alternate Public Defender divisions is unable to represent an indigent
5 defendant due to a conflict of interest. Such private attorneys may be retained
6 as independent contractors based upon possessing qualifications established
7 by the Board and receiving a rate of One Hundred and Fifty (\$150) dollars per
8 hour, subject to case-type-based caps, until the Corporation develops and
9 adopts alternative compensation policies, in consultation with the Guam Bar
10 Association. Any proposed increase to the hourly rates for Private Attorney
11 Panel providers must be approved through a resolution by the Superior Court
12 of Guam.

13 (6) The Director may establish such divisions or other organizational
14 units as may be determined to be necessary for the efficient and effective
15 administration and operation of the Corporation.

16 (e) Advocate to the government of Guam for resources and policies
17 necessary to ensure effective public legal services, to include resource parity.

18 (f) Has the power to do any and all things necessary to further the purposes
19 of this Chapter and to perform the duties imposed by subsection (a) and (b).

20 (g) Has the power to sue on behalf of the Corporation, its client, or its
21 employees, to enforce any rights granted to the Corporation or mandated by law or
22 granted by the Organic Act of Guam, the U.S. Constitution or the laws of Guam.

23 (h) Has the power to lease, evict, or sue on behalf of the Corporation,
24 relative to the Corporation's properties, equipment, and facilities.

25 **§ 11105. Board of Trustees: Appointments, Membership, and Terms. All**
26 **powers vested in the Corporation, except as otherwise provided in this Chapter, shall**
27 **be exercised by the Board of Trustees. The Board shall consist of seven members.**

1 At least four members shall be licensed to practice law in jurisdictions that are
2 subject to the Sixth Amendment of the U.S. Constitution.

3 (a) The Board members shall be appointed as follows:

4 (1) Two members by the Chief Justice of The Supreme Court of
5 Guam, one of whom has experience in public administration, finance, and/or
6 budgeting, and one of whom has experience in the field of social work.

7 (2) Two members by the Governor of Guam, both of whom must be
8 lawyers;

9 (3) Two members by the Speaker of the Guam Legislature, one of
10 whom must be a lawyer and one who is a member of the general public;

11 (4) One member by the President of the Guam Bar Association, who
12 must be a lawyer.

13 (b) If any one of these entities fails to appoint, cannot appoint, or refuses
14 to appoint a Board member within thirty days of the request, the Director shall
15 appoint an acting Board member until such time as the vacancy is filled.

16 (c) The term for a Board member shall be four years. Board members shall
17 hold office until their successors are appointed and shall continue to exercise such
18 duties until a successor is appointed. Board members shall not serve more than two
19 successive full terms. The initial terms of the members shall be staggered: two
20 members shall be appointed for a term of four years each, two members shall be
21 appointed for a term of three years each, two members shall be appointed for a term
22 of two years each, and one member shall be appointed for a term of one year. Initial
23 appointments shall be for the following terms:

24 (1) The members appointed by the Chief Justice shall serve an initial
25 term of four years.

26 (2) The lawyer members appointed by the Governor shall serve an
27 initial term of two years.

1 (3) The lawyer member appointed by the Speaker of the Guam
2 Legislature shall serve an initial term of three years.

3 (4) The non-lawyer member appointed by the Speaker of the Guam
4 Legislature shall serve an initial term of three years.

5 (5) The member appointed by the President of the Guam Bar
6 Association, shall serve an initial term of one year.

7 (d) A vacancy in the Board membership shall be filled in the same manner
8 as the original appointment.

9 (e) The Board shall elect a chairperson and vice chairperson from its
10 membership to serve a two-year term. A member shall not serve as chairperson and
11 vice chairperson of the Board for more than two successive full terms.

12 **§ 11106. Board of Trustees: Qualifications.**

13 (a) A person appointed to the Board shall have:

14 (1) significant experience in the legal representation of criminal,
15 juvenile or civil cases; or

16 (2) a demonstrated commitment to quality public legal services.

17 (b) No person shall be appointed to, or serve on, the Board who is a:

18 (1) current justice, judge, judicial officer, Guam Bar Association
19 Officer, or employee thereof;

20 (2) current prosecutor, law enforcement official, or employee
21 thereof;

22 (3) current elected Senator, legal services provider or employee of
23 the Corporation; or

24 (4) current contractor with, or recipient of funding from, the
25 Corporation, Office of the Attorney General (OAG), or employee thereof.

26 (c) Lawyer members may be retired judicial officers, inactive attorneys,
27 and retired attorneys who resigned in good standing.

1 **§ 11107. Board of Trustees: Meetings, Compensation, and Removal.**

2 (a) No less than four Board members shall constitute a quorum at a meeting
3 of the Board of Trustees. No less than four Board members must vote in favor for a
4 motion to pass. Board meetings shall be open to the public and subject to the Open
5 Government Law. Board meetings may be held virtually so long as there is
6 opportunity for meaningful public participation and pursuant to Guam law.

7 (b) Board members shall receive a stipend of One Hundred (\$100) dollars
8 per meeting, not to exceed Two Hundred (\$200) dollars in a month.

9 (c) The majority of the Board may remove a member for cause. Grounds
10 for removal and procedure shall be set forth in the bylaws.

11 **§ 11108. Board of Trustees: Powers and Duties.** The Board of Trustees
12 shall:

13 (a) Establish standards governing effective public legal services in Guam.
14 Such standards shall be designed to ensure public legal services meet constitutional
15 requirements required under The Organic Act of Guam, the laws of Guam, the
16 United States Constitution, and industry best practices.

17 (b) Establish a formal indigency determination standard to assess a
18 person's eligibility to receive public legal services. The indigency determination
19 shall be periodically reviewed so that the standard reflects the current state of
20 Guam's economy. In establishing a formal indigency determination standard, the
21 Board shall:

22 (1) Determine the prevailing rate for retaining a private defense
23 attorney in Guam;

24 (2) Establish a presumption of indigency, whereby a person is
25 automatically presumed indigent in certain situations, including but not
26 limited to a person who is incarcerated; a person in a mental health, substance
27 abuse, or any other type of residential or treatment facility; a person who is

1 unemployed; a person who is the recipient of any type of public assistance at
2 the time of the indigency determination; or a person who is a minor; and

3 (3) Consider the person's dependents, income, and other factors for
4 the court to make a fair and efficient determination of a person's indigency.

5 (c) Appoint the Director to oversee all Corporation divisions.

6 (d) Conduct an annual performance evaluation for the Director.

7 (e) Establish minimum qualifications for each division Managing
8 Attorney.

9 (f) Approve, modify, and/or disapprove budget requests from the Director
10 and submit financial and budgetary requests and reports to the judiciary, legislature,
11 and/or governor as required by law.

12 (g) Adopt such policies and procedures as may be necessary to carry out
13 the Board's powers and duties, including adopting bylaws to govern the Corporation
14 and all divisions within the Corporation.

15 (h) Adopt policy and rules for the operation of the Corporation, including
16 but not limited to, personnel, procurement, facilities and property, financial and
17 travel.

18 (i) All powers vested in the Corporation, except as otherwise provided in
19 the Chapter, shall be exercised by the Board.

20 **§ 11109. Board of Trustees: Minimum Standards, Rules, and Procedures.**

21 The Board of Trustees shall promulgate and implement minimum standards, rules,
22 and procedures to guarantee indigent persons effective assistance of counsel as
23 provided under The Organic Act of Guam, the laws of Guam, and the United States
24 Constitution. The minimum standards, rules, and procedures shall apply to all public
25 legal services providers. Such standards, rules, and procedures, shall be guided by
26 the following principles:

1 (a) The delivery of public legal services shall be independent of judicial
2 and political influence.

3 (b) Public legal services providers' ability, training, and experience shall
4 match the nature and complexity of the case appointed.

5 (c) Public legal services providers shall attend initial and annual training
6 relevant to the types of cases on which they provide representation.

7 (d) Public legal services providers' workloads shall be controlled to permit
8 sufficient time and resources to represent every indigent client. Procedures shall be
9 established for the Corporation to decline cases due to excessive workload.

10 (e) Public legal services providers shall be appointed immediately after
11 arrest, detention, or upon request and shall confer with their client prior to the next
12 court appearance.

13 (f) Waiver of the right to counsel shall not be coerced or encouraged.
14 Before a person may waive counsel, they must be provided a meaningful opportunity
15 to confer with a public legal services provider.

16 (g) Barring conflicts of interest, the same public legal services provider or
17 Division shall continuously represent and personally appear at every court
18 appearance throughout the pendency of the case.

19 (h) Each indigent person shall receive a public legal services provider who
20 is free of conflicts of interest as early as possible in the case.

21 (i) Public legal services providers shall be provided space where attorney-
22 client confidentiality is safeguarded for meetings with clients.

23 (j) Public legal services providers shall be compensated at a rate that does
24 not discourage, disincentivize, or impair the provider's ability to provide effective
25 representation. No public legal services provider shall be paid a flat fee in exchange
26 for legal representation services. Government employed public legal services
27 providers shall be compensated at a rate comparable to other publicly funded

1 attorneys and should not be compensated less than prosecutors. Private attorneys
2 should be paid at a rate that reflects the cost of overhead and other office expenses,
3 as well as payment for work.

4 (k) Public legal services providers shall have clear procedures for obtaining
5 experts, investigators, social workers, interpreters, secretaries, paralegals, and
6 resources for cases that do not discourage, disincentivize, or impair the provider's
7 ability to provide effective representation.

8 (l) Public legal services providers shall be systematically reviewed for
9 effective representation according to the Corporation's standards.

10 (m) Public legal services providers shall provide requested data to the
11 Corporation.

12 **§ 11110. Director: Appointment and Qualifications.** The Board shall
13 appoint the Director, who shall head and oversee the operation of all Corporation
14 divisions.

15 (a) The Director shall directly supervise the administrative division and
16 shall supervise the other divisions through the Managing Attorneys.

17 (b) The Director shall be appointed by approval of five Board members and
18 for a term of office of four years, which can be renewed.

19 (c) The Director shall not be removed by the Board during his/her term of
20 appointment, absent for cause shown through due process.

21 (d) The Director shall be an unclassified position. If the Director is
22 appointed from among the classified employees of the Government, upon the
23 termination of the appointment as Director, the former Director may return to the
24 classified position held previously as provided for in the personnel rules of the
25 Corporation.

26 (e) The Director shall be an attorney with the following minimum
27 qualifications:

- 1 (1) Licensed to practice law in Guam;
2 (2) Five years of legal experience in public legal services in criminal
3 or juvenile delinquency cases, at the trial or appellate level;
4 (3) Commitment to ensuring effective public legal services to all
5 indigent persons in Guam; and
6 (4) Experience in management, or with the legislative process.

7 (f) The Director shall be full-time and devote their entire time during
8 ordinary business hours to their duties. The Director shall neither directly nor
9 indirectly engage in the private practice of law, except for *pro bono* work.

10 **§ 11111. Director: Powers and Duties.** The Director shall have the sole
11 responsibility to carry out the purposes and duties of the Corporation and ensure that
12 each division fulfills its statutory duty, including but not limited to:

13 (a) Appointing a Deputy Director, and fix his/her duties, under and in
14 accordance with 4 GCA, as may be necessary for the purposes of this Chapter.

15 (b) Appointing the managing attorney of each Corporation division, when
16 necessary.

17 (c) Hiring the necessary attorney, professional, technical, and support staff
18 for each division to accomplish the division's statutory duties.

19 (d) Determining and implementing the method for delivering public legal
20 services by utilizing government-employed public defenders and private attorneys.

21 (e) Requiring and receiving monthly financial reporting from each
22 division, including assets, liabilities, receipts, and expenditures.

23 (f) Collecting and analyzing data from all divisions.

24 (g) Requesting proposed budgets from each division, to propose a
25 comprehensive budget for each division to the Board of Trustees.

26 (h) Proposing budgets and policies to the Board of Trustees.

27 (i) Distributing legislative appropriations to each division.

1 (j) Assisting the Board in developing standards.

2 (k) Investigating, auditing, and reviewing the operation of all public legal
3 services to ensure compliance with the Board of Trustees' standards, rules, and
4 procedures.

5 (l) Identifying and implementing a system of performance metrics to
6 assess compliance with Board standards.

7 (m) Establishing procedures for clients, judges, and prosecutors to
8 communicate concerns and/or needs regarding the provision of public legal services,
9 and procedures for the Corporation to respond.

10 (n) Establishing procedures for monitoring, and responding to, client
11 complaints on an ongoing basis.

12 (o) Providing training and support to all public legal services providers.

13 (p) Submitting an Annual Report to the Board of Trustees.

14 **§ 11112. Personnel and Employment.**

15 (a) Pursuant to the provisions of 4 GCA § 4105, the Board shall establish
16 rules and regulations governing selection, promotion, performance evaluation,
17 demotion, suspension and other disciplinary action for the employees of the
18 Corporation.

19 (b) Employees of the Corporation shall be in the classified service unless
20 otherwise authorized by law. Employees of the Corporation shall be members of the
21 Government of Guam Retirement Fund, subject to the provisions of 4 GCA § 8105,
22 except that for the purposes of Subsection (a) of said Section, the employees of the
23 Corporation shall not be considered employees of a “public corporation,” whereby
24 their membership in the Fund is optional and membership therein must be
25 specifically requested. The Corporation shall contribute to the Government of Guam
26 Retirement Fund on the basis of annual billings, as determined by the Board of
27 Trustees of the Government of Guam Retirement Fund, for the government share of

1 the cost of the retirement benefits applicable to the Corporation's employees and
2 their beneficiaries. The Corporation shall also contribute to the Workmen's
3 Compensation Fund, on the basis of annual billings, as determined by the
4 Workmen's Compensation Commission, for the benefit payments made from such
5 Fund on account of the Corporation's employees.

6 (c) Notwithstanding any other provision of law, compensation for
7 employees of the Corporation shall be in accordance with the compensation plan set
8 forth in the "Government of Guam Competitive Wage Act of 2014 as amended by
9 the 2024 Updated Attorney Pay Plan, General Pay Plan, and Law Enforcement Pay
10 Plan," subject to appropriations, unless modified by the Board pursuant to Title 4
11 GCA §6302.

12 (d) The attorneys employed by the Corporation may practice before the
13 courts of Guam on the same basis as other government attorneys pursuant to the
14 Guam Rules Governing Admission to the Practice of Law.

15 **§ 11113. Additional Authority.** The Corporation may require assistance from
16 any department or agency of the government of Guam in fulfilling its responsibility
17 pursuant to this chapter, including but not limited to waiving any fees or costs for
18 services involving the representation of indigent clients.

19 **§ 11114. Data Collection.** The Corporation shall, at a minimum, collect and
20 regularly review data related to:

21 (a) Public legal services providers' workloads that detail the number of
22 cases, by case type, open at the start of the month; newly opened cases during the
23 month; closed cases during the month; and open cases at the end of the month. Data
24 shall be provided for each division as a whole and for each attorney providing
25 representation within a division;

26 (b) The time public legal services providers devote to providing
27 representation in individual cases, and the time devoted to non-case-related work;

1 (c) The use of investigators, experts, social workers and other support
2 services;

3 (d) Major case events;

4 (e) Case outcomes;

5 (f) Monetary expenditures;

6 (g) Clients' race, ethnicity and gender;

7 (h) Persons waiving public legal services, persons seeking public legal
8 services, persons denied public legal services, and persons denied public legal
9 services who proceed in their case without counsel or with retained counsel; and

10 (i) All other data necessary to ensure effective public legal services in
11 Guam.

12 **§ 11115. Funding.** The Corporation shall be funded to ensure effective public
13 legal services are provided as required by The Organic Act of Guam, the laws of
14 Guam, and the United States Constitution.

15 (a) There is hereby established a fund to be known as the "Public Defender
16 Service Corporation Fund," which shall be maintained by the Administration
17 Division separate and apart from other funds of the Government, and independent
18 records and accounts shall be maintained in connection therewith. Every quarter, the
19 financial statement of the Public Defender Service Corporation Fund shall be
20 furnished to the Guam Legislature.

21 (b) All moneys received by the Corporation, from whatever source derived,
22 including local appropriation or grant, federal appropriation or grant, shall be
23 deposited in the Public Defender Service Corporation Fund. The Corporation shall
24 be allowed to carry over all lapses from fiscal year to fiscal year, notwithstanding
25 any other provision of law, or administrative provision in public laws setting forth
26 each fiscal year's budget. This provision shall remain in effect in all budgets
27 hereafter, unless specifically amended or repealed by subsequent legislation.

1 (c) The Judiciary of Guam shall continue to provide annual funding to the
2 Public Defender Service Corporation from the Judicial Client Service Fund as cited
3 in § 9602 of Chapter 9.6, Title 7, Guam Code Annotated (Public Law 27-055).

4 (d) All expenditures for the Corporation and its divisions shall be made
5 from the Public Defender Service Corporation Fund.

6 (e) The Corporation shall adopt and maintain a uniform system of
7 accounting.

8 **§ 11116. Annual Report.** The Corporation shall submit an annual report,
9 which shall be public, to the Governor, Legislature, and The Supreme Court of
10 Guam. The annual report must include, but not be limited to, data on operations,
11 itemized expenditures and revenues, and compliance with the Corporation's
12 standards. All annual reports must be posted on the Corporation's website.

13 **§ 11117. Federal Landtakings: Legal Aid and Assistance.** Notwithstanding
14 the provisions of § 11104(b) of this Title, the Public Defender Service Corporation
15 shall assist and represent in court or otherwise persons who have apparently valid
16 claims under §204 (relating to federal landtakings) of the Territorial Omnibus 7 Act
17 of 1977 (H.R. 6550). The Corporation shall render legal aid and assistance to any
18 person who qualifies under the following guidelines:

19 (a) A family or individual below one hundred fifty percent (150%) of the
20 Community Service Administration's (CSA) Income Poverty Guidelines adjusted
21 for Guam;

22 (b) A family or individual who is receiving welfare benefits; or (c) A person
23 who has been rejected, in writing, by two (2) private practicing members of the
24 Guam Bar.

25 **§ 11118. Same: No Charge for Costs and Services.** The Public Defender
26 Service Corporation shall not charge claimants for its general costs or services or
27 require a claimant to repay any filing fees or other court related fees incurred in the

1 representation of the claimant. The Corporation may require assistance from any
2 department or agency of the government of Guam in fulfilling its responsibility
3 pursuant to this Chapter.

4 **§ 11119. Continuity of Operations.**

5 The Public Defender Service Corporation re-enacted herein shall be the
6 successor to the Public Defender Service Corporation. All employees of the Public
7 Defender Service Corporation, including the Alternate Public Defender and the Civil
8 Law Center, shall be transferred to the Public Defender Service Corporation.
9 Wherever Guam law, rule or regulation refers to the Public Defender Service
10 Corporation, such references shall remain applicable to the re-enacted Public
11 Defender Service Corporation.”

12 **Section 3.** § 45.30(b) of Chapter 45, Title 8, Guam Code Annotated is hereby
13 *amended* to read:

14 “(b) If the defendant appears without counsel, the court shall ask him if he
15 desires the assistance of counsel. If he desires counsel, the court shall inquire of him
16 whether he is financially able to employ counsel and, if so, whether he desires to
17 employ counsel of his choice or to have counsel assigned to him ~~at his own expense~~
18 through the Public Defender Service Corporation. If he desires assignment of
19 counsel, the court shall make such assignment. The court shall assign counsel at
20 public expense if the defendant desires counsel and is financially unable to employ
21 counsel.”

22 **Section 4.** § 45.40 of Chapter 45, Title 8, Guam Code Annotated is hereby
23 *amended* to read:

24 “~~§45.40.~~ In any criminal or juvenile proceeding in which a person is entitled
25 to be represented by counsel at public expense and ~~the court finds that~~ because of
26 conflict of interest that the attorneys from the Public Defender Divisions, the
27 attorneys from the Alternate Public Defender Division, and the attorneys from the

1 Private Attorney Panel has properly refused to represent the defendant, the court
2 Board of Trustees of the Public Defender Service Corporation shall appoint private
3 counsel for the defendant who shall receive a reasonable compensation and
4 necessary expenses to be paid by the Public Defender Service Corporation subject
5 to appropriation. ~~and order that counsel receive a reasonable sum for compensation~~
6 ~~and necessary expenses to be paid by the Treasurer of the Territory.”~~

7 **Section 5. Board Appointment Prior to Effect Date of Act.** The Board of
8 Trustees of the Public Defender Service Corporation may be appointed prior to
9 October 1, 2025 in order to adopt its policies and procedures prior to the effective
10 date of this Act.

11 **Section 6. Effective Date.** This Act shall become effective on October 1,
12 2025.

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 97-38 (LS)

As Amended by the Committee on Economic Investment,
Military Buildup, Regional Relations, Technology,
Regulatory Affairs, Justice, Elections, and Retirement

Introduced by:

Frank F. Blas, Jr.
Telo T. Taitague

**AN ACT TO *REPEAL* AND *REENACT* CHAPTER 11 OF
TITLE 12, GUAM CODE ANNOTATED; AND TO *AMEND*
§45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM
CODE ANNOTATED; RELATIVE TO THE
REORGANIZATION OF THE **GUAM** PUBLIC
DEFENDER SERVICE CORPORATION TO PROVIDE
EFFECTIVE LEGAL AID AND SERVICES TO PERSONS
WHO ARE ENTITLED TO COUNSEL UNDER THE
ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND
THE UNITED STATES CONSTITUTION AND TO CITE
THIS ACT AS THE “**GUAM** PUBLIC DEFENDER
SERVICE CORPORATION ACT OF 2025.”**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. I Liheslaturan Guåhan finds
that the right to counsel is a fundamental guarantee under the Organic Act of Guam
and the Sixth Amendment to the United States Constitution. This right obligates
Guam to ensure effective assistance of counsel to indigent individuals facing a
potential loss of liberty.

I Liheslaturan Guåhan further finds under Guam law, the Public Defender
Services Corporation (PDSC) administers the majority of adult and juvenile trial and

1 appellate representation throughout Guam. In this system, primary representation is
2 provided by public defenders from the PDSC division, while secondary
3 representation is administered by the Alternate Public Defender (APD) division.
4 Tertiary representation is provided by a Private Attorney Panel appointed by the
5 Judiciary and compensated on an hourly basis. In cases where no panel attorney is
6 available, judges have the authority to appoint a licensed attorney to ensure
7 representation.

8 *I Liheslaturan Guåhan* further finds that a March 2024 evaluation by the Sixth
9 Amendment Center identified challenges in achieving full independence for Guam's
10 indigent defense system, which is essential to ensuring effective representation and
11 public confidence in the justice system. The report highlighted the need for an
12 independent governance structure to oversee indigent defense services, addressing
13 key areas such as attorney qualifications, supervision, and resource allocation.

14 *I Liheslaturan Guåhan* further finds that for years, the Judiciary of Guam has
15 overseen and provided administrative support for the operations of the Private
16 Attorney Panel. While the Judiciary's leadership has been necessary to ensure the
17 right to counsel during the early development of indigent defense, *I Liheslatura*
18 recognizes the importance of establishing independence to prevent undue influence
19 from any single branch of government, improving the delivery of justice and
20 upholding constitutional rights.

21 It is therefore the intent of *I Liheslaturan Guåhan* that the ~~Guam~~ Public
22 Defender Service Corporation shall manage the island's public legal services
23 delivery system. This corporation will oversee all indigent defense services on
24 Guam, including, at minimum, a public defender division, an alternate public
25 defender division, a civil legal services division, and a private attorney panel. The
26 corporation will further have the authority to promulgate and enforce standards for

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indigent defense, collect and analyze data, and allocate resources to maintain effective and equitable representation.

~~*I Liheslaturan Guåhan* further finds that indigent defense services on Guam are partially funded through the Judicial Client Services Fund, which is under the stewardship of the Judicial Council (7 GUAM CODE ANN. §9602). All fees, fines, or revenues approved by the Supreme Court of Guam or the Judicial Council and collected by the Courts of Guam, which are over and above the fees collected as of September 12, 2002, are deposited into this fund.~~

~~*I Liheslaturan Guåhan* further finds that the Judicial Client Services Fund was not established to fully support indigent defense but to serve as a supplementary source to bridge funding gaps (Committee Report on Bill No. 124-33). Indigent defense is only one of several critical services the Fund supports. In addition to indigent defense, the Fund also supports client services and family counseling, off-island marshal escorts, operations at Erica's House, interpreters through the Language Assistance Program, as well as claims for expert witnesses, investigators, jury fees, and other necessary expenses. Additionally, the Fund oversees mediation services related to custody and visitation of minor children when ordered by the court, as permitted under Miscellaneous Rule 4 of the Local Rules of Court.~~

~~*I Liheslaturan Guåhan* further finds that from 2005 to 2019, indigent defense was primarily funded through direct appropriations from the Legislature to the Judiciary (P.L. 28-68; P.L. 28-150; P.L. 29-19; P.L. 29-113; P.L. 30-55; P.L. 30-196; P.L. 31-77; P.L. 31-233; P.L. 32-68, P.L. 32-181, P.L. 33-66, P.L. 33-185, P.L. 34-43; P.L. 34-116). These appropriations, sourced from the General Fund, were designated specifically for court-appointed attorney fees to support the legal defense of indigent individuals. Despite continuing to oversee the private attorney panel, the Judiciary now receives no direct legislative funding for indigent defense and relies on fines and fees within the Judicial Client Services Fund. This absence of direct~~

~~funding poses significant challenges in maintaining quality indigent defense services.~~

~~*I Liheslaturan Guåhan* further recognizes that the Sixth Amendment Center has found fines and fees to be an unstable and unreliable primary funding source for indigent defense. According to the Sixth Amendment Center, national standards call for state funding through local government appropriations (Sixth Amendment Center, “How to Fund,” 2025). There is no correlation between the financial needs of an effective indigent defense system and revenue generated from fines, such as those assessed on traffic violations. The Sixth Amendment Center further reports that relying on such sources jeopardizes the consistent delivery of constitutionally mandated legal representation (Sixth Amendment Center, “How to Fund,” 2025).~~

I Liheslaturan Guåhan ~~therefore~~ further intends to appropriate funds directly to the Guam Public Defender Service Corporation and maintain continued funding from the Judicial Client Service Fund pursuant to § 9602 of Chapter 9.6, Title 7, Guam Code Annotated, ensuring a reliable and stable funding source.

Through this legislation, *I Liheslaturan Guåhan* reaffirms its commitment to protecting the constitutional rights of all residents.

Section 2. Chapter 11 of Title 12, Guam Code Annotated is hereby *repealed* and *reenacted* to read:

“Chapter 11

Guam Public Defender Service Corporation Act

~~§ 11101. — Short Title.~~

~~§ 11102. — Definitions.~~

~~§ 11103. — Establishment.~~

~~§ 11104. — Duties: Criminal Cases.~~

~~§ 11104.1. Public Defender Assistance in Connection with Recovery~~

~~and Probate of Land Claims Awards.~~

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~~§ 11105. Same: Civil Matters.~~

~~§ 11106. Powers.~~

~~§ 11107. Board of Trustees.~~

~~§ 11108. Director.~~

~~§ 11109. Personnel.~~

~~§ 11110. Employment.~~

~~§ 11111. Attorneys.~~

~~§ 11112. Employees.~~

~~§ 11113. Fiscal Authority Accounting; Expenditures.~~

~~§ 11113.1. Lapses.~~

~~§ 11114. Transfer of Property.~~

~~§ 11115. Federal Landtakings: Legal Aid and Assistance.~~

~~§ 11116. Same: No Charge for Costs and Services.~~

§ 11101. Short Title.

~~This Chapter may be cited as the *Public Defender Service Corporation Act of 1975*.~~

§ 11102. Definitions.

~~(a) — *Corporation* means the Public Defender Service Corporation.~~

~~(b) — *Board* means the Board of Trustees of the Public Defender Service Corporation.~~

~~(c) — *Director* means the Director of the Public Defender Service Corporation.~~

§ 11103. Establishment.

~~In order to provide effective legal aid and assistance to those persons in Guam who are unable to afford counsel, there is created a public corporation to be known as Public Defender Service Corporation.~~

§ 11104. Duties: Criminal Cases.

1 ~~It shall be the duty of the Corporation to defend indigent persons~~
2 ~~charged in criminal cases before the courts of Guam. The determination of~~
3 ~~whether a defendant is indigent and whether his case is to be referred to the~~
4 ~~Corporation shall be at the discretion of the judge before whom such~~
5 ~~defendant is appearing. The Corporation may assist the judges of the courts~~
6 ~~of Guam in determining when the services of the Corporation are appropriate.~~

7 **§ 11104.1. Public Defender Assistance in Connection with Recovery and**
8 **Probate of Land Claims Awards.**

9 ~~The Public Defender is authorized to provide legal services in~~
10 ~~connection with the recovery of settlement shares and probate administration~~
11 ~~of land claims awards, to persons who are unable to obtain the legal services~~
12 ~~of a private attorney. No such services shall be provided unless the applicant~~
13 ~~therefor shall have produced proof, in form and substance approved by the~~
14 ~~Public Defender, that no less than three (3) private attorneys have declined to~~
15 ~~provide the requested services. The Public Defender shall not, in any event,~~
16 ~~represented any person who opposes or objects to, or who intends to oppose~~
17 ~~or object to, an application for payment of a settlement share, a petition for~~
18 ~~letters of administration or for preliminary or final distribution, or a petition~~
19 ~~pursuant to § 4906 of Title 15 of the Guam Code Annotated, the subject of~~
20 ~~which is a land claims award.~~

21 **§ 11105. Same: Civil Matters.**

22 ~~The Corporation shall render legal aid and assistance to those persons~~
23 ~~in Guam, who, under rules established by the Corporation, are in the greatest~~
24 ~~economic and social need of legal assistance and representation. The~~
25 ~~Corporation shall not accept fee generating cases and shall give legal~~
26 ~~assistance in civil matters only to those who would otherwise not receive such~~
27 ~~assistance. The Corporation may apply for, receive, and administer grants,~~

~~subgrants or enter into intragovernmental and intergovernmental agreements to provide legal services to elderly individuals, as defined pursuant to local or federal laws, regulations, or guidelines. The Corporation is authorized to comply with the requirements of federal grants, subgrants, and intragovernmental and intergovernmental agreements, to include representation of individuals who may qualify for services pursuant to the terms of federal grants, subgrants, and intragovernmental and intergovernmental agreements.~~

§11106. Powers.

~~The Corporation has the power to do any and all things necessary to further the purposes of this Chapter and to perform the duties imposed by §§ 11104, 11105 and 11115.~~

§11107. Board of Trustees.

~~(a) All powers vested in the Corporation, except as otherwise provided in this Chapter, shall be exercised by the Board. The Board shall consist of five (5) Trustees: the Chief Justice of the Supreme Court of Guam, who shall be Chairman; the Presiding Judge of the Superior Court of Guam who shall be Vice-Chairman; the President of the Guam Bar Association; and two (2) members appointed by the Chief Justice of the Supreme Court of Guam, whose terms shall be for three (3) years. Neither person appointed by the Chief Justice shall be the Attorney General, or a member of his staff. The Trustees shall not be employees of the Corporation.~~

~~(b) Three (3) Trustees shall constitute a quorum of the Board for the transaction of all business. Subject to the provisions of the Administrative Adjudication Act, the Board may adopt rules and regulations governing the conduct of its affairs.~~

§ 11108. Director.

COMMITTEE MARKUP VERSION

1 ~~The Board shall appoint a Director who shall have at least five (5) years~~
2 ~~experience in the practice of law. The Director shall be a member of the~~
3 ~~classified service. The Director shall have the sole responsibility to carry out~~
4 ~~the purposes and duties of the Corporation.~~

5 **§ 11109. Personnel.**

6 ~~The Director is authorized to appoint a Deputy Director, and such other~~
7 ~~personnel, and fix their duties, under and in accordance with 4 GCA, as may~~
8 ~~be necessary for purposes of this Chapter.~~

9 **§ 11110. Employment.**

10 ~~(a) Pursuant to the provisions of 4 GCA § 4105 the Board shall~~
11 ~~establish rules and regulations governing selection, promotion, performance~~
12 ~~evaluation, demotion, suspension and other disciplinary action for the~~
13 ~~employees of the Corporation.~~

14 ~~(b) Employees of the Corporation shall be members of the~~
15 ~~Government of Guam Retirement Fund, subject to the provisions of 4 GCA §~~
16 ~~8105, except that for the purposes of Subsection (a) of said Section, the~~
17 ~~employees of the Corporation shall not be considered employees of a “public~~
18 ~~corporation,” whereby their membership in the Fund is optional and~~
19 ~~membership therein must be specifically requested. The Corporation shall~~
20 ~~contribute to the Government of Guam Retirement Fund on the basis of annual~~
21 ~~billings as determined by the Board of Trustees, Government of Guam~~
22 ~~Retirement Fund, for the government share of the cost of the retirement~~
23 ~~benefits applicable to the Corporation’s employees and their beneficiaries.~~
24 ~~The Corporation shall also contribute to the Workmen’s Compensation Fund,~~
25 ~~on the basis of annual billings as determined by the Workmen’s Compensation~~
26 ~~Commissioner, for the benefit payments made from such Fund on account of~~
27 ~~the Corporation’s employees.~~

COMMITTEE MARKUP VERSION

(c) ~~Notwithstanding any other provision of law, compensation for employees of the Public Defender Service Corporation shall be in accordance with the compensation plan set forth in the “Government of Guam Competitive Wage Act of 2014” transmitted to I Liheslaturan Guåhan on January 15, 2014, subject to appropriations from I Liheslaturan Guåhan.~~

§ 11112. Employees.

~~The Director shall be a successor to the Public Defender of Guam. All employees of the Office of the Public Defender of Guam shall be transferred to the Public Defender Service Corporation.~~

~~Any person accepting employment under this Section shall receive not less than the straight-time rate of compensation he was receiving immediately before the transfer date. The other employment benefits and rights, including retirement and leave of such transferred employees, shall be governed by the provisions of § 11110 of this Chapter.~~

§ 11113. Fiscal Authority Accounting; Expenditures.

(a) ~~There is hereby established a fund to be known as the “Public Defender Service Corporation Fund,” which shall be maintained by the General Administrative Services of the Judicial Branch separate and apart from other funds of the Government, and independent records and accounts shall be maintained in connection therewith. Every quarter the financial statement of the Fund shall be furnished the Guam Legislature.~~

(b) ~~All moneys received by the Corporation, from whatever source derived, shall be deposited in said Public Defender Service Corporation Fund in eligible banks as defined in § 6311 of the Government Code.~~

(c) ~~All expenditures shall be made from said Public Defender Service Corporation Fund.~~

(d) ~~The Board shall adopt and maintain a uniform system of accounting.~~

§ 11113.1. Lapses.

~~The Public Defender Service Corporation shall be allowed to carry over all lapses from fiscal year to fiscal year, beginning with Fiscal Year 2000, notwithstanding any other provisions of law, or administrative provisions in public laws setting forth each fiscal year's budget. This provision shall remain in effect in all budgets hereafter, unless specifically amended or repealed by subsequent legislation. The language, notwithstanding any other provision of law, shall not constitute a specific repeal of this provision.~~

§ 11114. Transfer of Property.

~~There is transferred to the Corporation all items of property now assigned to the Office of the Public Defender of Guam.~~

§ 11115. Federal Landtakings: Legal Aid and Assistance.

~~Notwithstanding the provisions of § 11105 of this Title, the Public Defender Corporation shall assist and represent in court or otherwise persons who have apparently valid claims under § 204 (relating to federal landtakings) of the Territorial Omnibus Act of 1977 (H.R. 6550). The Corporation shall render legal aid and assistance to any person who qualified under the following guidelines:~~

~~(a) A family or individual below one hundred fifty percent (150%) of the Community Service Administration's (CSA) Income Poverty Guidelines adjusted for Guam;~~

~~(b) A family or individual who is receiving welfare benefits; or~~

~~(c) A person who has been rejected, in writing, by two (2) private practicing members of the Guam Bar.~~

§ 11116. Same: No Charge for Costs and Services.

COMMITTEE MARKUP VERSION

~~The Public Defender Corporation shall not charge claimants for its general costs or services or require a claimant to repay any filing fees or other court related fees incurred in the representation of the claimant. The Corporation may require assistance from any department or agency of the government of Guam in fulfilling its responsibility pursuant to this Chapter.~~

§ 11101. Short Title

§ 11102. Definitions

§ 11103. Establishment of The ~~Guam~~ Public Defender Service Corporation

§ 11104. Corporation: Powers and Duties

§ 11105. Board of Trustees: Appointments, Membership, and Terms

§ 11106. Board of Trustees: Qualifications

§ 11107. Board of Trustees: Meetings, Compensation, and Removal

§ 11108. Board of Trustees: Powers and Duties

§ 11109. Board of Trustees: Minimum Standards, Rules, and Procedures

§ 11110. Director: Appointment and Qualifications

§ 11111. Director: Powers and Duties

§ 11112. Personnel and Employment

§ 11113. Additional Authority

§ 11114. Data Collection

§ 11115. Funding

§ 11116. Annual Report

§ 11117. Federal Landtakings: Legal Aid and Assistance.

§ 11118. Same: No Charge for Costs and Services.

§ 11119. Continuity of Operations

§ 11101. Short Title. This Chapter may be cited as the ~~Guam~~ Public Defender Service Corporation Act of 2025.

§ 11102. Definitions.

(a) “Attorney” means a person licensed to practice law in Guam.

(b) “Child” or “minor” means a person less than eighteen (18) years of age on the date legal proceedings are first commenced against the person.

(c) “Corporation” means ~~Guam~~ Public Defender Service Corporation.

(d) “Board” means the Board of Trustees of the Corporation.

(e) “Division” means an organized structure within the ~~Guam~~ Public Defender Service Corporation.

(f) “Managing Attorney” means the head of each ~~Guam~~ Public Defender Service Corporation division.

(g) “Director” means the attorney appointed by the ~~Guam~~ Public Defender Service Corporation Board to oversee all ~~Guam~~ Public Defender Service Corporation divisions.

(h) “Indigent” means a person who does not have sufficient resources to retain a private attorney and pay for the necessary expenses of legal representation without substantial burden or undue hardship.

(i) “Lawyer” means a person licensed to practice law in a jurisdiction subject to the Sixth Amendment of the U.S. Constitution.

(j) “Public legal services” means legal representation provided to an indigent person.

(k) “Public legal services” provider means an attorney or Division providing public legal services by the Corporation.

§ 11103. Establishment of The ~~Guam~~ Public Defender Service Corporation. In order to provide effective public legal services to those persons in Guam, there is created a public corporation to be known as the ~~Guam~~ Public Defender Service Corporation. The ~~Guam~~ Public Defender Service Corporation is established as an autonomous entity within the government of Guam. ~~Except for~~

COMMITTEE MARKUP VERSION

~~Subject to T~~the Supreme Court of Guam's and Guam Legislature's authority to regulate the practice of law under The inherent, statutory, and Organic Act authority of Guam, the Corporation shall have full authority to independently and autonomously oversee, supervise, administer and budget for control the administration, budgeting, funding, jurisdiction, and delivery of all public legal services in Guam. ~~The Corporation shall exercise its statutory powers and duties independent of any other branch of the government of Guam.~~

§ 11104. Corporation: Powers and Duties. The Corporation shall:

(a) Accept all appointments from the courts of Guam to provide indigent defense, public and legal services, unless all divisions have a conflict of interest, including but not limited or to excessive workloads. It shall be the duty of the Corporation to defend indigent persons charged in criminal cases before the courts of Guam. The determination of whether a defendant is indigent and whether his the case is to be referred to the Corporation shall be at the discretion of the judge before whom such defendant is appearing. The Corporation may assist the judges of the courts of Guam in ruling on cases of indigency and in establishing criteria for determining when the services of the Corporation are appropriate.

(b) Render public civil legal services to those persons in Guam, who, under rules established by the Corporation, are in the greatest economic and social need of legal assistance and representation, subject to the availability of funds. The Corporation shall not accept fee-generating cases and shall give legal assistance in civil matters only to those who would otherwise not receive such assistance. The Corporation may apply for, receive, and administer grants, subgrants or enter into intragovernmental and intergovernmental agreements to provide legal services to elderly individuals or other classes of individuals in need, as defined pursuant to local or federal laws, regulations, or guidelines. The Corporation is authorized to comply with the requirements of federal grants, subgrants, and intragovernmental

COMMITTEE MARKUP VERSION

1 and intergovernmental agreements, to include representation of individuals who may
2 qualify for services pursuant to the terms of federal grants, subgrants, and
3 intragovernmental and intergovernmental agreements.

4 (c) Apply for, receive, distribute, and administer grants,~~private gifts, and~~
5 ~~bequests.~~

6 (d) Establish divisions to oversee a public legal services delivery system
7 that shall consist of, at a minimum, the following:

8 (1) Administration Division to provide for the day-to-day operations of
9 the Corporation and to provide training, human resources, technology, data
10 collection, finance, accounting, resources, communication, administrative
11 support to all other divisions, and other such duties as assigned by the
12 Director.

13 (2) Public Defender Division to provide public legal services to
14 indigent persons in criminal and/or juvenile proceedings, including Petitions
15 for Persons in Need of Services, appeals therefrom, and in writ proceedings
16 involving the protection of constitutional rights, when those persons are
17 entitled to public legal services in the Superior Court of Guam, unless the
18 Public Defender Division has a conflict of interest, and other such duties as
19 assigned by the Director.

20 (3) Alternate Public Defender Division to provide public legal services
21 to indigent persons in criminal and/or juvenile proceedings when the Public
22 Defender Division has a conflict of interest, unless the Alternate Public
23 Defender Division has a conflict of interest, and other such duties as assigned
24 by the Director.

25 (4) Civil Law ~~Center~~ Division to provide civil legal representation to
26 indigent persons, unless the Civil Law Center has a conflict of interest. In
27 accordance to the mandates under 12 G.~~GC~~.A. § 11105, the Civil Law Center

COMMITTEE MARKUP VERSION

1 shall be strictly responsible for handling only matters relating to civil public
2 legal services. To avoid conflicts, the Civil Law Center shall not receive
3 criminal court appointments.

4 (5) Private Attorney Panel Division to provide public legal services to
5 indigent persons in criminal and/or juvenile cases, including Petitions for
6 Persons in Need of Services, appeals therefrom, and in writ proceedings
7 involving the protection of constitutional rights, when those persons who are
8 entitled to public legal services in the Superior and Supreme courts of Guam
9 who cannot be represented by any other division due to a conflict of interest.
10 This will include representation at trial, to include writs involving the
11 protection of constitutional rights. Public legal services Private Attorney
12 Panel providers and support staff providing this representation shall not be
13 employees of the Corporation. This division may include a panel of
14 investigators appointed to assist Private Attorney Panel attorneys on a case by
15 case basis. The Private Attorney Panel Division shall consist of attorneys
16 qualified by Board Policy to receive appointments for the provision of public
17 legal services when both the Public Defender Division and Alternate Public
18 Defender divisions is unable to represent an indigent defendant due to a
19 conflict of interest. Such private attorneys may be retained as independent
20 contractors based upon possessing qualifications established by the Board and
21 receiving a rate of One Hundred and Fifty (\$150) dollars per hour, subject to
22 case-type-based caps, until the Corporation develops and adopts alternative
23 compensation policies, in consultation with the Guam Bar Association. Any
24 proposed increase to the hourly rates for Private Attorney Panel providers
25 must be approved through a resolution by the Superior Court of Guam pay
26 established by the Board. The procurement of such professional legal services
27 are exempt from procurement rules.

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(6) The Director may establish such divisions or other organizational units as may be determined to be necessary for the efficient and effective administration and operation of the Corporation.

(e) Advocate to the government of Guam for resources and policies necessary to ensure effective public legal services, to include resource parity.

(f) Has the power to do any and all things necessary to further the purposes of this Chapter and to perform the duties imposed by subsection (a) and (b).

(g) Has the power to sue on behalf of the Corporation, its clients, or its employees, or itself to enforce any rights granted to the Corporation or mandated by law or granted by the Organic Act of Guam, the U.S. Constitution or the laws of Guam.

(h) Has the power to lease, evict, or sue on behalf of the Corporation, relative to the Corporation's properties, equipment, and facilities.

§ 11105. Board of Trustees: Appointments, Membership, and Terms. All powers vested in the Corporation, except as otherwise provided in this Chapter, shall be exercised by the Board of Trustees. The Board shall consist of seven members. At least four members shall be licensed to practice law in jurisdictions that are subject to the Sixth Amendment of the U.S. Constitution.

(a) The Board members shall be appointed as follows:

(1) Two members by the Chief Justice of The Supreme Court of Guam, one of whom has experience in public administration, finance, and/or budgeting, and one of whom has experience in the field of social work ~~one of whom must be a lawyer.~~

(2) Two members by the Governor of Guam, ~~one both~~ of whom ~~is a must be lawyers and one of whom has experience in public administration, finance and/or budgeting;~~

COMMITTEE MARKUP VERSION

(3) Two members by the Speaker of the Guam Legislature, one of whom ~~is must be~~ a lawyer and one ~~who is a member of the general public of whom has experience in public administration, finance and/or budgeting;~~

(4) One member by the President of the Guam Bar Association, who must be a lawyer.

(b) If any one of these entities fails to appoint, cannot appoint, or refuses to appoint a Board member within thirty days of the request, the Director shall appoint an acting Board member until such time as the vacancy is filled.

(c) The term for a Board member shall be four years. Board members shall hold office until their successors are appointed and shall continue to exercise such duties until a successor is appointed. Board members shall not serve more than ~~may serve more than one term, but no more than three two~~ successive full terms. The initial terms of the members shall be staggered: two members shall be appointed for a term of four years each, two members shall be appointed for a term of three years each, two members shall be appointed for a term of two years each, and one member shall be appointed for a term of one year. Initial appointments shall be for the following terms:

~~(1) The lawyer member appointed by the Chief Justice shall serve an initial term of two years.~~

~~(12)~~ The member~~s~~ appointed by the Chief Justice shall serve an initial term of four years.

~~(23)~~ The lawyer member~~s~~ appointed by the Governor shall serve an initial term of two years.

~~(4) The member appointed by the Governor with experience in public administration, finance and/or budgeting shall serve an initial term of four years.~~

COMMITTEE MARKUP VERSION

1 (35) The lawyer member appointed by the Speaker of the Guam
2 Legislature shall serve an initial term of three years.

3 (46) The non-lawyer member appointed by the Speaker of the Guam
4 Legislature ~~with experience in finance, accounting, and/or budgeting~~ shall
5 serve an initial term of three years.

6 (57) The member appointed by the President of the Guam Bar
7 Association, shall serve an initial term of one year.

8 (d) A vacancy in the Board membership shall be filled in the same manner
9 as the original appointment.

10 (e) The Board shall ~~initially elect two of the original Board members to~~
11 ~~serve as chairperson and vice chairperson for a term of one year. At the expiration~~
12 ~~of the initial year, or upon the vacancy in the membership of the appointed~~
13 ~~chairperson and/or vice chairperson, the Board shall~~ elect a chairperson and vice
14 chairperson from its membership to serve a two-year term. A member shall not serve
15 as chairperson and vice chairperson of the Board for more than ~~three~~ ~~two~~ successive
16 full terms.

17 **§ 11106. Board of Trustees: Qualifications.**

18 (a) A person appointed to the Board shall have:

19 (1) significant experience in the legal representation of criminal,
20 juvenile or civil cases; or

21 (2) a demonstrated commitment to quality public legal services.

22 (b) No person shall be appointed to, or serve on, the Board who is a:

23 (1) current justice, judge, judicial officer, Guam Bar Association
24 Officer, or employee thereof;

25 (2) current prosecutor, law enforcement official, or employee
26 thereof;

COMMITTEE MARKUP VERSION

(3) current elected Senator, ~~public~~ legal services provider or employee of the Corporation; or

(4) current contractor with, or recipient of funding from, the Corporation, Office of the Attorney General (OAG), or employee thereof.

(c) ~~Lawyer members may be from off island jurisdictions that are subject to the Sixth Amendment of the United States Constitution.~~ Lawyer members may be retired judicial officers, inactive attorneys, and retired attorneys who resigned in good standing.

§ 11107. Board of Trustees: Meetings, Compensation, and Removal.

(a) No less than four Board members shall constitute a quorum at a meeting of the Board of Trustees. No less than four Board members must vote in favor for a motion to pass. ~~The Board shall hold monthly meetings for the first two years and hold quarterly meetings thereafter, unless more frequent meetings are warranted.~~ Board meetings shall be open to the public and subject to the Open Government Law. Board meetings may be held virtually so long as there is opportunity for meaningful public participation and pursuant to Guam law.

(b) Board members shall receive a stipend of One Hundred (\$100) dollars per meeting, not to exceed Two Hundred (\$200) dollars in a month as authorized under Guam law for board members.

(c) The majority of the Board may remove a member for cause. Grounds for removal and procedure shall be set forth in the bylaws.

§ 11108. Board of Trustees: Powers and Duties. The Board of Trustees shall:

(a) Establish standards governing effective public legal services in Guam. Such standards shall be designed to ensure public legal services meet constitutional requirements required under The Organic Act of Guam, the laws of Guam, the United States Constitution, and industry best practices.

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1 (b) Establish a formal indigency determination standard to assess a
2 person's eligibility to receive public legal services. The indigency determination
3 shall be periodically reviewed so that the standard reflects the current state of
4 Guam's economy. In establishing a formal indigency determination standard, the
5 Board shall:

6 (1) Determine the prevailing rate for retaining a private defense
7 attorney in Guam;

8 (2) Establish a presumption of indigency, whereby a person is
9 automatically presumed indigent in certain situations, including but not
10 limited to a person who is incarcerated; a person in a mental health, substance
11 abuse, or any other type of residential or treatment facility; a person who is
12 unemployed; a person who is the recipient of any type of public assistance at
13 the time of the indigency determination; or a person who is a minor; and

14 (3) Consider the person's dependents, income, and other factors for
15 the court to make a fair and efficient determination of a person's indigency.

16 (c) Appoint the Director to oversee all Corporation divisions.

17 (d) Conduct an annual performance evaluation for the Director.

18 (e) Establish minimum qualifications for each division Managing
19 Attorney.

20 (f) Approve, modify, and/or disapprove budget requests from the Director
21 and submit financial and budgetary requests and reports to the judiciary, legislature,
22 and/or governor as required by law.

23 (g) Adopt such policies and procedures as may be necessary to carry out
24 the Board's powers and duties, including adopting bylaws to govern the Corporation
25 and all divisions within the Corporation.

(h) Adopt policy and rules for the operation of the Corporation, including but not limited to, personnel, procurement, facilities and property, financial and travel.

(i) All powers vested in the Corporation, except as otherwise provided in the Chapter, shall be exercised by the Board.

§ 11109. Board of Trustees: Minimum Standards, Rules, and Procedures.

The Board of Trustees shall promulgate and implement minimum standards, rules, and procedures to guarantee indigent persons effective assistance of counsel as provided under The Organic Act of Guam, the laws of Guam, and the United States Constitution. The minimum standards, rules, and procedures shall apply to all public legal services providers. Such standards, rules, and procedures, shall be guided by the following principles:

(a) The delivery of public legal services shall be independent of judicial and political influence.

(b) Public legal services providers' ability, training, and experience shall match the nature and complexity of the case appointed.

(c) Public legal services providers shall attend initial and annual training relevant to the types of cases on which they provide representation.

(d) Public legal services providers' workloads shall be controlled to permit sufficient time and resources to represent every indigent client. Procedures shall be established for the Corporation to decline cases due to excessive workload.

(e) Public legal services providers shall be appointed immediately after arrest, detention, or upon request and shall confer with their client prior to the next court appearance.

(f) Waiver of the right to counsel shall not be coerced or encouraged. Before a person may waive counsel, they must be provided a meaningful opportunity to confer with a public legal services provider.

1 (g) Barring conflicts of interest, the same public legal services provider or
2 Division shall continuously represent and personally appear at every court
3 appearance throughout the pendency of the case.

4 (h) Each indigent person shall receive a public legal services provider who
5 is free of conflicts of interest as early as possible in the case.

6 (i) Public legal services providers shall be provided space where attorney-
7 client confidentiality is safeguarded for meetings with clients.

8 (j) Public legal services providers shall be compensated at a rate that does
9 not discourage, disincentivize, or impair the provider's ability to provide effective
10 representation. No public legal services provider shall be paid a flat fee in exchange
11 for legal representation services. Government employed public legal services
12 providers shall be compensated at a rate comparable to other publicly funded
13 attorneys and should not be compensated less than prosecutors. Private attorneys
14 should be paid at a rate that reflects the cost of overhead and other office expenses,
15 as well as payment for work.

16 (k) Public legal services providers shall have clear procedures for obtaining
17 experts, investigators, social workers, interpreters, secretaries, paralegals, and
18 resources for cases that do not discourage, disincentivize, or impair the provider's
19 ability to provide effective representation.

20 (l) Public legal services providers shall be systematically reviewed for
21 effective representation according to the Corporation's standards.

22 (m) Public legal services providers shall provide requested data to the
23 Corporation.

24 **§ 11110. Director: Appointment and Qualifications.** The Board shall
25 appoint the Director, who shall head and oversee the operation of all Corporation
26 divisions.

COMMITTEE MARKUP VERSION

1 (a) The Director shall directly supervise the administrative division and
2 shall supervise the other divisions through the Managing Attorneys.

3 (b) The Director shall be appointed by approval of five Board members and
4 for a term of office of four years, which can be renewed.

5 (c) The Director shall not ~~may~~ be removed by the Board during his/her
6 term of appointment, absent for cause shown through due process in its discretion.

7 (d) The Director shall be an unclassified position. If the Director is
8 appointed from among the classified employees of the Government, upon the
9 termination of the appointment as Director, the former Director may return to the
10 classified position held previously as provided for in the personnel rules of the
11 Corporation.

12 (e) The Director shall be an attorney with the following minimum
13 qualifications:

14 (1) Licensed to practice law in Guam;

15 (2) Five years of legal experience in public legal services in criminal
16 or juvenile delinquency cases, at the trial or appellate level;

17 (3) Commitment to ensuring effective public legal services to all
18 indigent persons in Guam; and

19 (4) Experience in management, or with the legislative process.

20 (f) The Director shall be full-time and devote their entire time during
21 ordinary business hours to their duties. The Director shall neither directly nor
22 indirectly engage in the private practice of law, except for *pro bono* work.

23 **§ 11111. Director: Powers and Duties.** The Director shall have the sole
24 responsibility to carry out the purposes and duties of the Corporation and ensure that
25 each division fulfills its statutory duty, including but not limited to:

COMMITTEE MARKUP VERSION

1 (a) Appointing a Deputy Director, ~~and such other personnel~~, and fix ~~their~~
2 ~~his/her~~ duties, under and in accordance with 4 GCA, as may be necessary for the
3 purposes of this Chapter.

4 (b) Appointing the managing attorney of each Corporation division, ~~when~~
5 ~~necessary~~.

6 (c) Hiring the necessary attorney, professional, technical, and support staff
7 for each division to accomplish the division's statutory duties.

8 (d) Determining and implementing the method for delivering public legal
9 services by utilizing government-employed public defenders and private attorneys.

10 (e) Requiring and receiving monthly financial reporting from each
11 division, including assets, liabilities, receipts, and expenditures.

12 (f) Collecting and analyzing data from all divisions.

13 (g) Requesting proposed budgets from each division, to propose a
14 comprehensive budget for each division to the Board of Trustees.

15 (h) Proposing budgets and policies to the Board of Trustees.

16 (i) Distributing legislative appropriations to each division.

17 (j) Assisting the Board in developing standards.

18 (k) Investigating, auditing, and reviewing the operation of all public legal
19 services to ensure compliance with the Board of Trustees' standards, rules, and
20 procedures.

21 (l) Identifying and implementing a system of performance metrics to
22 assess compliance with Board standards.

23 (m) Establishing procedures for clients, judges, and prosecutors to
24 communicate concerns and/or needs regarding the provision of public legal services,
25 and procedures for the Corporation to respond.

26 (n) Establishing procedures for monitoring, and responding to, client
27 complaints on an ongoing basis.

(o) Providing training and support to all public legal services providers.

(p) Submitting an Annual Report to the Board of Trustees.

§ 11112. Personnel and Employment.

(a) Pursuant to the provisions of 4 GCA § 4105, the Board shall establish rules and regulations governing selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for the employees of the Corporation.

(b) Employees of the Corporation shall be in the classified service unless otherwise authorized by law. Employees of the Corporation shall be members of the Government of Guam Retirement Fund, subject to the provisions of 4 GCA § 8105, except that for the purposes of Subsection (a) of said Section, the employees of the Corporation shall not be considered employees of a “public corporation,” whereby their membership in the Fund is optional and membership therein must be specifically requested. The Corporation shall contribute to the Government of Guam Retirement Fund on the basis of annual billings, as determined by the Board of Trustees of the Government of Guam Retirement Fund, for the government share of the cost of the retirement benefits applicable to the Corporation’s employees and their beneficiaries. The Corporation shall also contribute to the Workmen’s Compensation Fund, on the basis of annual billings, as determined by the Workmen’s Compensation Commission, for the benefit payments made from such Fund on account of the Corporation’s employees.

(c) Notwithstanding any other provision of law, compensation for employees of the Corporation shall be in accordance with the compensation plan set forth in the “Government of Guam Competitive Wage Act of 2014 as amended by the 2024 Updated Attorney Pay Plan, General Pay Plan, and Law Enforcement Pay Plan,” subject to appropriations, unless modified by the Board pursuant to Title 4 GCA §6302.

(d) The attorneys employed by the Corporation may practice before the courts of Guam on the same basis as other government attorneys pursuant to the Guam Rules Governing Admission to the Practice of Law.

§ 11113. Additional Authority. The Corporation may require assistance from any department or agency of the government of Guam in fulfilling its responsibility pursuant to this chapter, including but not limited to waiving any fees or costs for services involving the representation of indigent clients.

§ 11114. Data Collection. The Corporation shall, at a minimum, collect and regularly review data related to:

(a) Public legal services providers' workloads that detail the number of cases, by case type, open at the start of the month; newly opened cases during the month; closed cases during the month; and open cases at the end of the month. Data shall be provided for each division as a whole and for each attorney providing representation within a division;

(b) The time public legal services providers devote to providing representation in individual cases, and the time devoted to non-case-related work;

(c) The use of investigators, experts, social workers and other support services;

(d) Major case events;

(e) Case outcomes;

(f) Monetary expenditures;

(g) Clients' race, ethnicity and gender;

(h) Persons waiving public legal services, persons seeking public legal services, persons denied public legal services, and persons denied public legal services who proceed in their case without counsel or with retained counsel; and

(i) All other data necessary to ensure effective public legal services in Guam.

1 **§ 11115. Funding.** The Corporation shall be funded to ensure effective public
2 legal services are provided as required by The Organic Act of Guam, the laws of
3 Guam, and the United States Constitution.

4 (a) There is hereby established a fund to be known as the “Public Defender
5 Service Corporation Fund,” which shall be maintained by the Administration
6 Division separate and apart from other funds of the Government, and independent
7 records and accounts shall be maintained in connection therewith. Every quarter, the
8 financial statement of the Public Defender Service Corporation Fund shall be
9 furnished to the Guam Legislature.

10 (b) All moneys received by the Corporation, from whatever source derived,
11 including local appropriation or grant, federal appropriation or grant, ~~private gifts,~~
12 ~~bequests, and donations,~~ shall be deposited in the Public Defender Service
13 Corporation Fund. The Corporation shall be allowed to carry over all lapses from
14 fiscal year to fiscal year, notwithstanding any other provision of law, or
15 administrative provision in public laws setting forth each fiscal year’s budget. This
16 provision shall remain in effect in all budgets hereafter, unless specifically amended
17 or repealed by subsequent legislation.

18 (c) The Judiciary of Guam shall continue to provide annual funding to the
19 Public Defender Service Corporation from the Judicial Client Service Fund as cited
20 in § 9602 of Chapter 9.6, Title 7, Guam Code Annotated (Public Law 27-055).

21 (de) All expenditures for the Corporation and its divisions shall be made
22 from the Public Defender Service Corporation Fund.

23 (ed) The Corporation shall adopt and maintain a uniform system of
24 accounting.

25 **§ 11116. Annual Report.** The Corporation shall submit an annual report,
26 which shall be public, to the Governor, Legislature, and The Supreme Court of
27 Guam. The annual report must include, but not be limited to, data on operations,

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1 itemized expenditures; and revenues, and compliance with the Corporation's
2 standards. All annual reports must be posted on the Corporation's website.

3 **§ 11117. Federal Landtakings: Legal Aid and Assistance.** Notwithstanding
4 the provisions of § 11104(b) of this Title, the Public Defender Service Corporation
5 shall assist and represent in court or otherwise persons who have apparently valid
6 claims under §204 (relating to federal landtakings) of the Territorial Omnibus 7 Act
7 of 1977 (H.R. 6550). The Corporation shall render legal aid and assistance to any
8 person who qualifies under the following guidelines:

9 (a) A family or individual below one hundred fifty percent (150%) of the
10 Community Service Administration's (CSA) Income Poverty Guidelines adjusted
11 for Guam;

12 (b) A family or individual who is receiving welfare benefits; or (c) A person
13 who has been rejected, in writing, by two (2) private practicing members of the
14 Guam Bar.

15 **§ 11118. Same: No Charge for Costs and Services.** The Guam Public
16 Defender Service Corporation shall not charge claimants for its general costs or
17 services or require a claimant to repay any filing fees or other court related fees
18 incurred in the representation of the claimant. The Corporation may require
19 assistance from any department or agency of the government of Guam in fulfilling
20 its responsibility pursuant to this Chapter.

21 **§ 11119. Continuity of Operations.**

22 The Guam Public Defender Service Corporation re-enacted herein shall be the
23 successor to the Public Defender Service Corporation. All employees of the Public
24 Defender Service Corporation, including the Alternate Public Defender and the Civil
25 Law Center, shall be transferred to the Public Defender Service Corporation.
26 Wherever, Guam law, rule or regulation refers to the Public Defender Service

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Corporation, such references shall ~~remain applicable to the re-enacted be changed to~~
~~the Guam~~ Public Defender Service Corporation.”

Section 3. § 45.30(b) of Chapter 45, Title 8, Guam Code Annotated is hereby
amended to read:

“(b) If the defendant appears without counsel, the court shall ask him if he
desires the assistance of counsel. If he desires counsel, the court shall inquire of him
whether he is financially able to employ counsel and, if so, whether he desires to
employ counsel of his choice or to have counsel assigned to him ~~at his own expense~~
through the Guam Public Defender Service Corporation. If he desires assignment of
counsel, the court shall make such assignment. The court shall assign counsel at
public expense if the defendant desires counsel and is financially unable to employ
counsel.”

Section 4. § 45.40 of Chapter 45, Title 8, Guam Code Annotated is hereby
amended to read:

“§45.40. In any criminal ~~or juvenile proceeding action~~ in which a person
~~defendant~~ is entitled to be represented by counsel at public expense and ~~the court~~
~~finds that~~ because of conflict of interest ~~or other reason~~ that the ~~public defender~~
attorneys from the Public Defender Divisions, the attorneys from the Alternate
Public Defender Division, and the attorneys from the Private Attorney Panel has
properly refused to represent the defendant, the ~~court~~ Board of Trustees Private
Attorney Panel Division of the Guam Public Defender Service Corporation shall
appoint private counsel for the defendant who shall receive a reasonable
compensation and necessary expenses to be paid by the Guam Public Defender
Service Corporation subject to appropriation. ~~and order that counsel receive a~~
~~reasonable sum for compensation and necessary expenses to be paid by the Treasurer~~
~~of the Territory.~~”

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1 **Section 5. ~~Transfer.~~** ~~Effective October 1, 2025, the following shall be~~
2 ~~transferred from the Public Defender Service Corporation to the Guam Public~~
3 ~~Defender Service Corporation:~~

4 ~~(a) — All moneys in the Public Defender Service Corporation Fund.~~

5 ~~(b) — All employees of the Public Defender Service Corporation. Any person~~
6 ~~accepting employment under this Section shall receive not less than the straight-time~~
7 ~~rate of compensation he was receiving immediately before the transfer date. The~~
8 ~~other employment benefits and rights, including retirement and leave of such~~
9 ~~transferred employees, shall be governed by the provisions of 12 GCA § 11112.~~

10 ~~(d) — All property of the Public Defender Service Corporation.~~

11 ~~Section 6.~~ **Board Appointment Prior to Effect Date of Act.** The Board of
12 Trustees of the Public Defender Service Corporation may be appointed prior to
13 October 1, 2025 in order to adopt its policies and procedures prior to the effective
14 date of this Act.

15 **Section 6. Effective Date.** This Act shall become effective on October 1,
16 2025.



COMMITTEE ON RULES

Vice Speaker V. Anthony Ada, Chairperson
I Mina'trentai Ocho Na Liheslaturan Guåhan
38th Guam Legislature

April 22, 2025

To: **Rennae V. C. Meno**
Clerk of the Legislature

From: **Vice Speaker V. Anthony Ada** 
Chairperson, Committee on Rules

Subject: **Fiscal Note for Bill No. 97-38 (LS)**

Håfa Adai!

Find the attached, Fiscal Note for the following bill:

Bill No. 97-38 (LS).

I also request that the same be sent to the respective Chairperson of the Standing Committee, to which this bill has been referred. Kindly forward the same to Management Information Services (MIS) for posting on our website.



**Bureau of Budget & Management Research
Fiscal Note of Bill No. 97-38 (LS)**

AN ACT TO REPEAL AND REENACT CHAPTER 11 OF TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND §45.30(b) AND §45.40 OF CHAPTER 45, TITLE 8, GUAM CODE ANNOTATED; RELATIVE TO THE REORGANIZATION OF THE GUAM PUBLIC DEFENDER SERVICE CORPORATION TO PROVIDE EFFECTIVE LEGAL AID AND SERVICES TO PERSONS WHO ARE ENTITLED TO COUNSEL UNDER THE ORGANIC ACT OF GUAM, THE LAWS OF GUAM, AND THE UNITED STATES CONSTITUTION AND TO CITE THIS ACT AS THE "GUAM PUBLIC DEFENDER SERVICE CORPORATION ACT OF 2025".

Department/Agency Appropriation Information		
Dept./Agency Affected: Public Defender Services Corporation (PDSC)	Dept./Agency Head: Stephen P. Hattori, Executive Director	
Department's General Fund (GF) appropriation(s) to date: Operations (\$7,059,467); Alternate Public Defender (\$1,831,079); Civil Law Center (\$950,411)		9,840,957
Department's Other Fund (Specify) appropriation(s) to date:		-
		\$9,840,957

Fund Source Information of Proposed Appropriation			
	General Fund:	(Specify Special Fund):	Total:
FY 2024 Unreserved Fund Balance		\$0	\$0
FY 2025 Adopted Revenues	\$0	\$0	\$0
FY 2025 Appro. (P.L. 37-125)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$0	\$0	\$0

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2025 (if applicable)	FY 2026	FY 2027	FY 2028	FY 2029
General Fund	\$0	1/	1/	1/	1/	1/
Special Fund	\$0	1/	1/	1/	1/	1/
Total	\$0	1/	1/	1/	1/	1/

- | | | | |
|---|------------|-------------------------------|--------------------------------|
| 1. Does the bill contain "revenue generating" provisions?
If Yes, see Attachment. | | / / Yes | / X / No |
| 2. Is amount appropriated adequate to fund the intent of the appropriation?
If no, what is the additional amount required? \$ _____ | / X / N/A | / / Yes | / / No |
| 3. Does the Bill establish a new program/agency?
If yes, will the program duplicate existing programs/agencies?
Is there a federal mandate to establish the program/agency? | / X / N/A | / / Yes
/ / Yes
/ / Yes | / X / No
/ / No
/ X / No |
| 4. Will the enactment of this Bill require new physical facilities? | | / / Yes | / X / No |
| 5. Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason:
/ / Requested agency comments not received by due date | / / Other: | / X / Yes | / / No |

Analyst: <u>William P. Lintington, Acting BMA Supvr</u>	Date: <u>4/14/25</u>	Director: <u>Lester L. Carlson, Jr., Director</u>	Date: <u>APR 17 2025</u>
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Comments:
1/ See attached comments on Bill 97-38 (LS).

Bureau of Budget and Management Research
Comments on Bill No. 97-38 (LS)

The proposed legislation seeks to repeal and reenact Chapter 11 of Title 12, Guam Code Annotated; and to amend §45.30(b) and §45.40 of Chapter 45, Title 8, Guam Code Annotated; relative to the reorganization of the Guam Public Defender Service Corporation (PDSC) to provide effective legal aid and services to persons who are entitled to counsel under the Organic Act of Guam, the laws of Guam, and the United States Constitution and to cite this act as the “Guam Public Defender Service Corporation Act of 2025”.

It is noted in the legislative intent of the Bill that the Guam PDSC shall manage the island’s public legal services delivery system. The PDSC will oversee all indigent defense services on Guam, including, at minimum, a public defender division, an alternate public defender division, a civil legal services division, and a private attorney panel. The Guam PDSC will have the authority to promulgate and enforce standards for indigent defense, collect and analyze data, and allocate resources to maintain effective and equitable representation.

According to comments received, the Guam PDSC indicated that it will reserve its official testimony for the scheduled hearing for Bill 97-38 (LS). However, the Guam PDSC did provide that the Corporation fully supports Bill 97-38 (LS) and the proposed changes that are contained within. The Guam PDSC also noted that the proposed changes come as a result of a study conducted by the 6th Amendment Center that looks to bring Guam’s indigent defense delivery system in line with the administration of the Private Attorney Panel (PAP which was previously handled by the Judiciary of Guam. The impact on the operations of the Guam PDSC is still being assessed and finalized. This determination of the final impact of Bill 97-38 (LS) will include the fiscal impact on the Guam PDSC. Finalized funding estimates will be contained in its Fiscal Year 2026 Budget Request with the hope that, at a minimum, approved funding levels would align with current year appropriations. Furthermore, the Guam PDSC stated that the proposed changes and fiscal support are crucial in accomplishing the long-time goal of strengthening the access to services for indigent defense mandated by both the Organic Act of Guam and the United States Constitution.

Absent detailed information from the Guam PDSC, the Bureau is unable to provide and estimated fiscal impact at this time. However, such fiscal impact is dependent on the direct appropriation of funds by *I Liheslaturan Guåhan* to the Guam PDSC in ensuring a reliable and stable funding source annually for its operations.