



Judiciary of Guam

Guam Criminal Law and Procedure Review Commission
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HON. ROBERT J. TORRES
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA, III
PRESIDING JUDGE

HON. JONATHAN R. QUAN
CHAIRMAN

ANDREW SERGE QUENGA
EXECUTIVE DIRECTOR

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION (CLRC) PLENARY MEETING | THURSDAY, JULY 31, 2025 MINUTES

I. CALL TO ORDER

The meeting was called to order by Chair Jonathan Quan at 12:07 PM.

II. PROOF OF DUE NOTICE OF MEETING

The Chair confirmed due notice of the meeting and established quorum. The meeting was held in person and via Zoom and livestreamed on the Judiciary of Guam's YouTube channel.

III. DETERMINATION OF QUORUM

Roll call was conducted by Administrative Assistant Lisa Ibanez. Nine members were confirmed present, establishing a quorum.

Hon. Jonathan R. Quan, Present, Judiciary of Guam
Hon. Maria T. Cenzone, (No response during roll call)
Hon. Anita A. Sukola, (No response during roll call)
Atty. William Bucky Brennan, Present on Zoom, Hagåtña
DOC Director Designee Maj. Antone Aguon, (later logged on via Zoom)
Chief of Police Designee Sgt. Michael Elliott, Present on Zoom, Tiyan
Atty Joseph B McDonald, Present on Zoom, Sinajaña
Atty. F. Randall Cunliffe, Present on Zoom, Hagåtña
Mr. Monty McDowell, Present, Judiciary of Guam
Public Defender Designee Dep. Dir. John Morrison, Present on Zoom, Sinajaña
Attorney General Designee AAG Emily Rees, Present on Zoom, Tamuning
Atty. Mike Phillips, (No response during roll call)
Ms. Valerie Reyes, (No response during roll call)
Atty. Christine Tenorio, (No response during roll call)
Atty. Phillip Tydingco, (No response during roll call)
Ex-Officio, (Non-Voting Members)
Executive Director Andrew S. Quenga, Present, Judiciary of Guam
Compiler of Laws Geraldine Cepeda, Present, Judiciary of Guam
Chairman Quan acknowledged a quorum present.

IV. DISPOSAL OF MINUTES: May 29, 2025

The minutes of the May 29, 2025, plenary meeting were approved without objection.

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

V. OLD BUSINESS

Subcommission Status Update and Report of the Executive Director.

Director Quenga provided an informational report.

- The CLRC's Interim Report to *I Liheslaturan Guåhan*, approved at the plenary meeting of May 29, 2025, was transmitted to the Legislature, Governor, Chief Justice, and other stakeholders on June 13, 2025.
- The Commission's second quarterly report was issued on July 11, 2025, and posted online on the CLRC website.
- Research Attorney Andrew Strege was introduced and welcomed.

VI. NEW BUSINESS

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

Tabled by Chairman.

B. Subcommission on Crimes Against Persons: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval.

Tabled by Chairman.

C. Subcommission on Criminal Procedure: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval.

Executive Director Quenga presented on behalf of Subcommission Chair Judge Sukola. His PowerPoint presentation is included as Attachment 1.

- 9 GCA Chapter 7. Exemptions and Defenses.
 - § 7.10. Exemption from Criminal Liability Due to Juvenile Status. Amend as shown in Attachment 1, Slide 3.
 - Discussion: Non-substantive amendments for consistency with the Family Court Act (19 GCA § 5102).
 - § 7.16. Defense Mental Disease or Defect. No change as shown in Attachment 1, Slide 4.
 - § 7.19. Same: Admissibility of Evidence Showing. Amend as shown in Attachment 1, Slide 4.
 - Discussion: Non-substantive amendment to title.
 - § 7.22. Same: Procedure for Assertion of. Amend as shown in Attachment 1, Slide 5.
 - Discussion: Non-substantive amendment to title. Amend as shown in Attachment 1, Slide 6.
 - § 7.25. Psychiatric or Psychological Examination and Procedure.

- Discussion: Tabled.
- § 7.28. Acquittal: Order for Civil Commitment. No change.
- § 7.31. Acquittal: Verdict Must State Reason as Mental Disease Defect. Amend as shown in Attachment 1, Slide 6.
 - Discussion: Discussion: Non-substantive amendment to title.
- § 7.34. Acquittal: Court Order of Commitment or Release; Petition for Discharge.
 - Discussion: Tabled.
- § 7.37. Mental Disease: a Bar to Proceeding or Sentence. Amend as shown in Attachment 1, Slide 7.
 - Discussion: Recommendation to correct typographical error.
- § 7.40. Same: Hearing to Determine. Amend as shown in Attachment 1, Slide 8.
 - Discussion: Non-substantive amendment to title.
- § 7.43. Same: Hearing Procedure for Commitment and Release. Amend as shown in Attachment 1, Slide 9.
 - Discussion: Non-substantive amendment to title. Recommendation to Subsection (a) amendments for consistency with amendments to § 7.25. and subsection (e) amendments for clarification.
- § 7.46. Same: Mental Disease: Commitment as Exonerating Bail. Amend as shown in Attachment 1, Slide 10.
 - Discussion: Non-substantive amendment to title. Other amendments for clarification.
- § 7.49. Same: Mental Disease: Hearing and Procedure When Mental Disease or Defect Occurs After Sentence. Amend as shown in Attachment 1, Slide 10.
 - Discussion: Non-substantive amendment to title. Other amendments for clarification.
- § 7.52. Transfer of Committed Person Off-Island: Hearing and Notice to Attorney General Required. No change.
- § 7.55. Specific Defenses Defined and Allowed. Amend as shown in Attachment 1, Slide 12.
 - Discussion: Recommendation to Amend title for clarification and consistency with source MPC § 2.04. Subsection (b)(2)(A) typo correction.
- § 7.58. Intoxication. No change.
- § 7.61. Duress or Necessity. Amend as shown in Attachment 1, Slide 14.
 - Discussion: Recommendation to subsection (b) amend for consistency with “serious bodily injury” in § 7.76.
- § 7.64. Other Defenses. Amend as shown in Attachment 1, Slide 15.
 - Discussion: Recommendation to amend title for clarification and consistency with source MPC § 2.11.

- § 7.67. Appropriateness of Prosecution. Amend as shown in Attachment 1, Slide 16.
 - Discussion: Recommendation to amend title for clarification and consistency with source MPC § 2.12.
- § 7.70. Entrapment as Affirmative Defense. Amend as shown in Attachment 1, Slide 17.
 - Discussion: Recommendation to amend title for clarification and consistency with source MPC § 2.13.
- § 7.73. Specific Defenses Defined and Allowed; Ignorance or Mistake; Intoxication; Duress, Compulsion; Consent; De Minimus Infractions; Entrapment; and Renunciation. Amend as shown in Attachment 1, Slide 18.
 - Discussion: Non-substantive amendment to section title. Section only addresses renunciation. For consistency with source MPC § 5.01(g)(4).

Chairman Quan called for a motion to accept the Subcommittee Crim Pro's submission proposal concerning Chapter 7. Approved without objection.

Sections §§ 7.25 and 7.34 were tabled.

C. Ad Hoc Subcommittee on Corrections-related Chapters: Continued Discussion of Chapters Previously Presented and Presentation of Additional Recommendations for Discussion and Approval.

Executive Director Quenga presented on behalf of the Ad Hoc Subcommittee. His PowerPoint presentation is included as Attachment 2.

- 9 GCA Chapter 80 (Disposition of Offenders) Article 1 (General Provisions)
 - § 80.00. Terms of Imprisonment are Fixed Terms. No change.
 - § 80.10. Types of Sentences Allowed. Amend as shown in Attachment 2, Slide 4.
 - Discussion: Amendments clarify that "civil" commitment may be ordered, separate (a)(6) into different subsections for added clarity, and correct a grammatical error.
 - § 80.12. Presentence Report: Psychiatric Exam: Temporary Imprisonment for Classification. Amend as shown in Attachment 2, Slides 5-7.
 - Discussion: Amendment in subsection (a) clarifies Probation's official name, adds "presentence to subsections (b) and (c) for consistency, adds "psychiatric observation" in subsection (d) for consistency, and correct punctuation and grammatical errors. Possible relocation to Title 8 as this is primarily procedural.
 - § 80.14. Presentence Report: Use Regulated. Amend as shown in Attachment 2, Slide 8.
 - Discussion: Substantive amendment to increase disclosure of the presentence report from 2 to 5 days. For comparison, the subcommittee reviewed similar requirements in other jurisdictions (Attachment 2, Slide 9). Chairman Quan noted the report is normally provided more than 5 days before sentencing, and it is often waived, so it is not a significant issue. Other amendments are for consistency

and clarification. Possible relocation to Title 8 as this is primarily procedural.

- § 80.16. Sentence of Corporation. No change.
- § 80.18. Chapter Not Applicable to Youth Offenders. Amend as shown in Attachment 2, Slide 10.
 - Discussion: Amendment for clarification.
- § 80.20. Civil Commitments in Lieu of Prosecution in Certain Cases. Amend as shown in Attachment 2, Slide 10.
 - Discussion: Amendment in subsection (a) for clarification.
- § 80.22. Reduction by Court of Degree of Offense. No change.
- 9 GCA Chapter 80. Article 7 (Hormone or Anti-Androgen Pilot Treatment Program for Convicted Sex Offenders). Repeal Article 7 in its entirety as shown in Attachment 2, Slide 11.
 - Discussion: Recommendation by the Parole Services Division of the Department of Corrections to repeal this Article 7 in its entirety. This pilot program was created by the Legislature in 2015 with a trial period of 48 months after implementation. No rules were ever promulgated for this program and it was never implemented.

Chairman Quan called for a motion to approve Ad Hoc Subcommissions recommendations for Chapter 80, Article 1 and Article 7. Approved without objection.

- Discussion of 9 GCA § 80.38 (informational).

Research Attorney Gordon Anderson presented research on the unconstitutionality of § 80.38. His PowerPoint presentation is included in Attachment 3, Slides 1-12.

Extended-term sentencing statute § 80.38 (and by implication §§ 80.40 and 80.42) was ruled unconstitutional by the Guam Supreme Court in *People v. Muritok* (2003 Guam 21) for violating the U.S. Supreme Court's *Apprendi* rule that only juries—not judges—may make factual findings that increase a sentence beyond the statutory maximum. Ad Hoc is considering whether the statute can be fixed. He outlined possible legislative fixes: (1) substituting “jury” for “court” in the statutes; (2) adopting the Hawaii extended-term law requiring facts to be proven by a jury; or (3) restructuring along Oregon’s model, with bifurcated trials and explicit waiver options. He also noted comparative approaches in other jurisdictions and emphasized further research before recommendations are finalized. Input from other subcommissions was invited in discussions to continue on this issue.

E. Notice of next meeting: Thursday, September 25, 2025, Noon (Tentative)

VII. Communications

None.

VIII. Public Comment

Associate Justice F. Philip Carbullido thanked the Chairman, Executive Director and all Commission members for their efforts and expressed confidence that the project will bring significant benefits to Guam's legal community, the courts, and the broader island community.

IX. Adjournment

Chairman Quan adjourned the meeting without objection.

Respectfully submitted this 8th day of October, 2025.



Andrew S. Quenga, Executive Director

As set out above, the minutes of the July 31, 2025 plenary meeting were approved by the CLRC at the October 8, 2025 plenary meeting.



Magistrate Judge Jonathan R. Quan, Chairman

Date: 10/8/25 —