



# Judiciary of Guam

Guam Criminal Law and Procedure Review Commission  
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HON. KATHERINE A. MARAMAN  
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 | WEDNESDAY, OCTOBER 8, 2025 MINUTES

### I. CALL TO ORDER

The meeting was called to order by Chair Jonathan R. Quan at 12:00 PM. The meeting was held in person in the Judge Joaquin V. Manibusan Sr. Memorial Courtroom at the Judicial Center and via Zoom. The session was livestreamed on the Judiciary of Guam's YouTube channel.

### II. PROOF OF DUE NOTICE OF MEETING

The Chair confirmed due notice of the meeting in compliance with the Open Government Law. Notices were published in local newspapers and included in the meeting packet.

### III. DETERMINATION OF QUORUM

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

Hon. Jonathan R. Quan – Present, Judiciary of Guam  
Hon. Maria T. Cenzone – No response  
Hon. Anita A. Sukola – Present, California  
Atty. William B. Brennan – Present, Hagåtña  
DOC Designee Maj. Antone Aguon – Present, (Later logged on in Zoom)  
Chief of Police Designee Sgt. Michael Elliott – Present, Tiyan  
Atty. Joseph McDonald – Present, Sinajaña  
Atty. Randall Cunliffe – Present, Tamuning  
Mr. Monty McDowell – Present, Judiciary of Guam  
Public Defender Designee Atty. John Morrison – Present, Sinajaña  
Attorney General Designee Atty. Valerie Nuesa – Present, Hagåtña  
Attorney Michael Phillips – No response

Miss Valerie Reyes- No response  
Attorney Christine Tenorio- No response  
Atty. Philip Tydingco – Present, Judiciary of Guam

Ex-Officio (Non-Voting Members):  
Executive Director Serge Quenga – Present, Judiciary of Guam  
Compiler of Laws Geri Cepeda – Present, Judiciary of Guam

Chair Quan acknowledged that a quorum was present and welcomed all attendees and observers.

#### **IV. DISPOSAL OF MINUTES: July 31, 2025**

The minutes of the July 31, 2025 plenary meeting were approved without objection.

#### **V. OLD BUSINESS**

Director Quenga provided an informational report.

- The CLRC’s second-quarter report was posted online for public access.
- The CLRC is approaching its statutory completion date of January 2027, with continued progress across all subcommissions reviewing Title 9. Subcommissions are encouraged to work with Research Attorneys.

#### **VI. NEW BUSINESS**

At the request of the Executive Director, the Chairman allowed the Ad Hoc Subcommission to present first followed by the Criminal Procedure Subcommission, notwithstanding the Agenda order.

##### **A. Ad Hoc Subcommission on Corrections-Related Chapters: Discussion of Chapters and Presentation of Recommendations for Discussion and Approval.**

Executive Director Quenga presented on behalf of the Ad Hoc Subcommission. His PowerPoint presentation is included as Attachment 1.

- 9 GCA Chapter 80 (Disposition of Offenders), Article 2 (Imprisonment)
  - § 80.38 (Extended Terms for Felonies: When Allowed: Repeat Offenders).  
Repeal as shown in Attachment 1, Slides 3-5.
    - Discussion: This section was held to be unconstitutional by the Guam Supreme Court in 2003 in *People v. Muritok* (2003 Guam 21). Information on the unconstitutionality of this section for violating the U.S. Supreme Court’s *Apprendi* Rule was presented at the last plenary meeting. This section violates *Apprendi* as it impliedly removes from

the jury and prescribes to the court the duty to assess the facts that increase of the prescribed range of penalties to which a criminal defendant is exposed.

Question considered is whether to repeal § 80.38 or amend it to remove the constitutional infirmity. Ad Hoc Subcommittee recommended repeal because: no effort to amend the section since *Muritok* was decided in 2003; source MPC § 7.03 was repealed by the ALI in 2017; and Ad Hoc and Property Subcommittee members discussed and are inclined to repeal.

- § 80.40 (Extended Terms for Misdemeanor: When Allowed: Repeat or Multiple Offender), and § 80.42 (Extended Term by Petition of Department of Corrections). Repeal as shown in Attachment 1, Slides 6 and 8.
  - Discussion: §§ 80.40 and 80.42 contain the same infirmities as § 80.38 and are unconstitutional under *Muritok*. Repeal of § 80.38 encompasses §§ 80.40 and 80.42.
- § 80.32 (Extended Terms Allowed), § 80.36 (Same), § 80.44 (Previous Convictions Defined). Repeal as shown in Attachment 1, Slides 7-8.
  - Discussion: §§ 80.32, 80.36 and 80.44 reference the sections that are unconstitutional under *Muritok*. Repeal of § 80.38 encompasses §§ 80.32, 80.36 and 80.44.
- 9 GCA Chapter 80 sentencing default provisions.
  - § 80.30 (Duration of Imprisonment). No change as shown in Attachment 1, Slide 9.
  - § 80.34 (Misdemeanor and Petty Misdemeanor Sentences). Amend as shown in Attachment 1, Slide 9.
    - Discussion: Delete reference to § 80.36 which was recommended for repeal.
  - Discussion of default sentencing ranges. Attachment 1, Slides 10-15.
    - No changes recommended in the terms of imprisonment in §§ 80.30 or 80.34.
    - Ad Hoc Subcommittee and research attorneys conducted extensive research comparing Guam's default sentencing ranges with those of other jurisdictions and the Model Penal Code. Comparisons included New Jersey, the 2017 Model Penal Code sentencing provisions, and Nebraska. While other jurisdictions differ in the number of felony classifications, the actual ranges of imprisonment for felonies and misdemeanors were found to be largely comparable to Guam's existing defaults. The subcommittee concluded that there was no compelling basis to alter the default sentencing ranges at this time.

- Members discussed the interaction between default sentencing provisions and offense-specific statutes that authorize enhanced or directed sentences. It was noted that serious offenses such as murder and criminal sexual conduct are governed by specific statutory sentencing provisions, which supersede the default ranges.
- Members raised concerns regarding prison overcrowding and the lack of empirical sentencing data, including average sentence lengths and prison population composition and discussed that meaningful sentencing reform typically requires a data-driven approach, often undertaken by dedicated sentencing commissions. Several commissioners emphasized that while such considerations are important, comprehensive sentencing reform and prison capacity issues are outside the Commission’s direct mandate. The discussion acknowledged the potential value of recommending that the Legislature consider establishing a Guam Sentencing Commission to study sentencing policy holistically. Several examples of formal state and federal sentencing reform commissions were provided.

Chairman Quan called for a motion to approve the subcommission’s recommendations. Motion made by Atty. Phil Tydingco and seconded by Atty. Randy Cunliffe. Approved without objection.

**B. Subcommission on Criminal Procedure: Discussion of Chapters and Presentation of Recommendations for Discussion and Approval.**

Executive Director Quenga presented on behalf of Subcommission Chair Judge Sukola. His PowerPoint presentation is included as Attachment 2.

- 9 GCA Chapter 7 (Exemptions and Defenses.)
  - § 7.86(b). Amend as shown in Attachment 2, Slide 3. Replace the terms “harm” with “injury” and “rape or sodomy” with “criminal sexual conduct.”
    - Discussion: changes are for consistency with the terms “serious bodily injury” and “criminal sexual conduct” which are expressly defined in Title 9.

Attorney Randy Cunliffe noted that the change to criminal sexual conduct is overbroad because it includes inappropriate touching. Members agreed and Chairman Quan tabled this section for further discussion.

- § 7.96 section title and subsection (c). Amend as shown in Attachment 2, Slide 4. Delete “by §§ 7.04 & 7.06” from section title. Amend Replace “7.84” with “7.82” within subsection (c).

- Discussion: Amendment to title for clarification and avoidance of confusion from discrepancies with referenced section numbers with the section.

Correction in subsection (c) of apparent clerical error. Error and correction confirmed with the Compiler of Laws.

- 9 GCA Article 4 (Justification) and Article 5 (Castle Doctrine Act). No changes as shown in Attachment 2, Slides 5-8.

- Discussion: the Criminal Procedure Subcommittee conducted an extensive review and debate of Articles 4 and 5, focusing on the “no duty to retreat” provisions. The subcommittee’s central concern was Article 4’s initial aggressor limitation versus the absence of such a limitation in Article 5 raising the question of a potential statutory conflict. The subcommittee considered whether to amend Article 5 to add an initial aggressor exception or to leave the Castle Doctrine unchanged.

Factors supporting leaving Article 5 unchanged included: the Legislature’s apparent awareness of Article 4’s initial aggressor exception when enacting and later expanding Article 5; Article 5’s explicit cross-reference to Article 4’s self-defense provisions; the Legislature’s affirmative action in 2014 to amend Article 4 to ensure consistency with the Castle Doctrine; ongoing legislative expansions of the Castle Doctrine, reflecting clear policy choices; and the possibility for a defendant to assert self-defense if their castle immunity claim fails..

After discussion the Commission determined no substantive conflict exists and recommended no change.

Chairman Quan called for a motion to approve the subcommittee’s recommendations and to table § 7.86(b). Motion made by Atty. Phil Tydingco and seconded by Mr. Month McDowell. Approved without objection.

### **C. Subcommittee on Crimes Involving Property: Discussion of Chapters and Presentation of Recommendations for Discussion and Approval.**

Attorney Philip Tydingco presented on behalf of the Subcommittee on Crimes Involving Property. His PowerPoint presentation is included as Attachment 3.

- 9 GCA Chapter 58 Escape and Related Offenses.

- § 58.60 (Promoting Prison Contraband). Amend subsections (b) and (c) as shown in Attachment 3, Slide 3.
  - Discussion: deletion of mandatory minimums language consistent with similar recommendations on other statutes.
  - No other changes in this chapter.
- 9 GCA Chapter 61. Riot, Disorderly Conduct and Related Offenses.
  - § 61.10 (Riot: Failure to Disperse; Defined & Punished). Amend subsection (b) as shown in Attachment 3, Slide 4.
    - Discussion: subsection heading added to (b) for clarity. Term “knowingly” moved to cover both “refuses” and “fails” to clarify that the *mens rea* applies to both.
  - § 61.20 (Harassment; Defined & Punished).
    - Amend subsection (a) as shown in Attachment 3, Slide 5.
    - Discussion: Replace “offensively coarse language” with “fighting words likely to provoke immediate violence” to avoid First Amendment issues and for consistency with constitutional case law.
    - Repeal subsections (d) through (g). Enact new subsections (d) and (e) as shown in Attachment 3, Slide 6.
    - Discussion: Repetitive technology-specific language revised and consolidated into broad, medium-neutral provisions. Update language from outdated technology. Subcommittee noted an error in proposed subsection (e). Reference to subsection (3) should be to (d)(3).
  - § 61.30 (Loitering or Prowling; Defined & Punished; Defenses). Amend subsection (a) as shown in Attachment 3, Slide 7.
    - Discussion: Add “justifiable and reasonable” standard and revise bus stop provision to address vagueness concerns.

Compiler of Laws Cepeda suggested separating the language in subsection (a) into two sub-subsections (1) and (2) as follows:

- (a) A person commits a violation *if he or she*:
  - (1) loiters *or* prowls in a place, at a time, *or* in a manner not usual for law-abiding individuals under circumstances that warrant

justifiable and reasonable alarm for the safety of persons *or* property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a peace officer, refuses to identify himself, *or* manifestly endeavors to conceal himself *or* any object; *or*

~~A person commits a violation if he loiters or prowls in or in close proximity to a school bus stop, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity.~~

(2) loiters or remains in or about a school bus stop, not having any reason of relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same.

Subcommission Chair Tydingco agreed to the Compiler's suggestion.

- § 61.35 (Obstructing the Public Ways; Defined & Punished). Amend as shown in Attachment 3, Slide 8.
  - Discussion: Remove redundant subsection (b) to avoid First Amendment issues. Obstruction is covered in (a).
- § 61.40 (Disrupting Public Gatherings; Defined & Punished). Amend as shown in Attachment 3, Slide 9.
  - Discussion: Remove subjective speech restrictions and focus on actual disruption. Avoid First Amendment issues.
- § 61.45 (Desecration Defined & Punished). Amend as shown in Attachment 3, Slide 10.
  - Discussion: Remove flag desecration provision to comply with Supreme Court decision in *Texas v. Johnson*. Replace subjective "object of veneration" with "insignia" and "symbol" modeled after New Jersey law.
- § 61.60 (Creation of Hazards on Land: Penalty). Amend subsection (a) as shown in Attachment 3, Slide 11.
  - Discussion: Add "accessible to children" to subsection (a) to match the intent of the law and protect from overbreadth. Amendment mirrors California and New York laws.

- § 61.65 (Creation of Certain Hazards; Oil Pollution by Vessels: Definitions: Penalties).
  - Amend subsection (a) as shown in Attachment 3, Slide 12 to add separate subsections (1) and (2).
  - Discussion: Add separate subsections (1) and (2) for clarity.
  - Amend subsection (b) as shown in Attachment 3, Slide 12.
  - Discussion: Executive Director Quenga addressed historical clerical errors in subsection (b). The history of this section was traced through previous criminal codes back to the 1947 Penal Code of Guam.
    - “Private place” language in subsection (b) is deleted. This language is nonsensical in this section. It was somehow mistakenly taken from a neighboring section and inserted in this section.
    - The definition of “person” in this section from the 1947 Penal Code was somehow omitted and is reinserted into this section as a new subsection (b)(3).
  
- § 61.70 (Discharge of Firearms). Amend as shown in Attachment 3, Slide 13.
  - Discussion: Section reorganized to separate the elements of the offenses from the penalties for clarity.
    - Original subsection (b) moved to a new subsection (a)(5) and a new subsection (b) “Penalties” created for penalty provisions.
    - Change mandatory penalties to discretionary to address possible 8<sup>th</sup> Amendment excessive fines issues.
    - Subcommission noted an error in proposed subsection (b)(1). In the last sentence of (b)(1), the term “shall” should be changed to “may” consistent with other recommendations in this section.
  
- §§ 61.15 (Disorderly Conduct; Defined & Punished), 61.20.1. (Definitions), 61.25 (Public Drunkenness; Defined & Punished), § 61.50 (Disinterring a Corpse; Punished), and 61.55 (Endangering Health & Safety: Defined; Penalty). No change as shown in Attachment 3, Slide 14.

Chairman Quan called for a motion to approve the subcommission’s recommendations subject to the corrections noted. Motion made by Atty. Philip Tydingco and seconded by Atty Joseph McDonald. Approved without objection.

**D. Subcommittee on Crimes Against Persons: Discussion of Chapters and Presentation of Recommendations for Discussion and Approval.**

Tabled by Chairman.

**E. Subcommittee on Drug & Other Criminal Offenses: Discussion of Chapters and Presentation of Recommendations for Discussion and Approval**

Tabled by Chairman.

**VII. COMMUNICATIONS**

None.

**VIII. PUBLIC COMMENT**

None.

**IX. ADJOURNMENT**

There being no further business, Chair Quan adjourned the meeting at approximately 1:15 PM. The next meeting date is to be determined.

Respectfully submitted this 29th day of January 2026.



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Andrew S. Quenga, Executive Director

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



\_\_\_\_\_  
Magistrate Judge Jonathan R. Quan, Chairman

Date:

January 29, 2026

# ATTACHMENT 1

## AD HOC SUBCOMMISSION ON CORRECTIONS-RELATED CHAPTERS

PRESENTATION  
OCTOBER 8, 2025



# **Report of the Ad Hoc Subcommittee on Corrections-Related Chapters**

**October 8, 2025**

## **Discussion of Chapters and Presentation of Recommendations for Discussion and Approval**

Members: Atty Kristina Baird; Atty Mary Hill; Chief Parole Officer Michael P. Quinata;  
Chief Probation Officer Rossanna Villagomez-Aguon; Probation Officer Supervisor  
Jeremiah J.A. Cruz; Marshal Kennedy G. Robinson;  
Marshal Dodd Siegfred V. Mortera, Jr.

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## **Presented Today**

### **9 GCA Chapter 80 - Disposition of Offenders**

#### **Article 2 - Imprisonment.**

**§§ 80.30, 80.34, 80.38**

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## 9 GCA § 80.38

### § 80.38. Extended Terms for Felonies: When Allowed: Repeat Offenders.

The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the grounds specified in this Section. The finding of the court shall be incorporated in the record: ...

### Unconstitutional under *People v. Muritok*, 2003 Guam 21:

*"we hold that Title 9 GCA § 80.38 is unconstitutional and a violation of the rule expressed in Appendi because it impliedly removes from the jury and prescribes to the court the duty to "assess[] [the] facts that increase the prescribed range of penalties to which a criminal defendant is exposed."*

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## Questions Considered

- Should § 80.38 be repealed consistent with *Muritok*?
- Should it be amended to cure the infirmity?

Example based on Hawaii Revised Statutes § 706-662:

"The court may sentence a person who has been convicted of a felony to an extended term of imprisonment **if it finds if** one or more of the grounds specified in this Section **is proven beyond a reasonable doubt.** . . ."

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## Reasons for Repeal

- Since 2003, *Muritok* has controlled. Nothing has happened in 22 years.
- Adopted from the Model Penal Code § 7.03 which was essentially repealed by the ALI in 2017, when comprehensive changes were made to model sentencing and correctional provisions.
- Ad Hoc and Property members are inclined to repeal.

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## Other Statutes Affected by *Muritok*

### § 80.40. Extended Terms for Misdemeanor: When Allowed: Repeat or Multiple Offenders.

The court may sentence a person who has been convicted of a misdemeanor to an extended term of imprisonment if it finds one or more of the grounds specified in this Section. The findings of the court shall be incorporated in the record:

### § 80.42. Extended Term by Petition of Department of Corrections.

On petition of the Director of Corrections to the court in which the person was originally sentenced to imprisonment the court may extend his sentence to the terms prescribed by §§ 80.32 and 80.36 if it finds that such extension is necessary for protection of the public. In the case of a person originally sentenced to imprisonment for a petty misdemeanor, the court may extend his sentence to a term not to exceed two (2) years. Such a finding, which must be incorporated in the record, shall be based on the grounds that:

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## Other Statutes Affected

### § 80.32. Extended Terms Allowed.

In the cases designated in §§ 80.38 and 80.42, a person who has been convicted of a felony may be sentenced to an extended term of imprisonment as follows: ...

### § 80.36. Same.

In the cases designated in §§ 80.40 and 80.42, a person who has been convicted of a misdemeanor may be sentenced to an extended maximum term of imprisonment not to exceed three (3) years.

### § 80.44. Previous Convictions Defined.

(a) For purposes of Subsection (a) of § 80.38 or § 80.40, a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been a felony if sentence of death or of imprisonment in excess of one (1) year was authorized under the law of such other jurisdiction, of a misdemeanor if sentence of imprisonment in excess of sixty (60) days but not in excess of a year was authorized and of a petty misdemeanor if sentence of imprisonment for not more than sixty (60) days was authorized.

(b) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of §§ 80.38, 80.40 or 80.44, although sentence or the execution thereof was suspended, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence. When the defendant has asked that other crimes admitted in open court be taken into account when he is sentenced and the court has not rejected such request, the sentence shall bar the prosecution or conviction of the defendant in Guam for any such admitted crime.



## Recommendation is to Repeal

The Guam Supreme Court ruled on § 80.38 in 2003 and the statute has not been amended since. Although the “fix” might seem simple, we are not compelled to feel that it is necessary. We invite discussion and debate on this from all members of the CLRC.

Repeal of § 80.38 encompasses:

- §§ 80.40 and 80.42, which are implicitly unconstitutional under *Muritok*, and
- §§ 80.32, 80.36 and 80.44, which expressly reference §§ 80.38, 80.40 and/or 80.42.
- We will sweep through the GCA for any affected statutes.



## Article 2 Sentencing Defaults

### § 80.30. Duration of Imprisonment.

Except as otherwise provided by law, a person who has been convicted of a **felony** may be sentenced to imprisonment as follows:

- (a) felony of the first degree - **not less than five (5) years and not more than twenty (20) years;**
- (b) felony of the second degree **not less than three (3) years and not more than ten (10) years;** and
- (c) felony of the third degree - **not more than five (5) years.**

**Ad Hoc Comment: No change.**

### § 80.34. Misdemeanor and Petty Misdemeanor Sentences.

~~Except as otherwise provided by § 80.36, a~~ **A** person who has been convicted of a **misdemeanor or a petty misdemeanor** may be sentenced to imprisonment, as follows:

- (a) in the case of a misdemeanor - **maximum term not to exceed one (1) year;**
- (b) in the case of a petty misdemeanor - **definite term not to exceed sixty (60) days.**

**Ad Hoc Comment: Amend for consistency with repeal of § 80.36. No change to imprisonment terms.**



## Article 1 and 2 Default Departures

### § 80.22. Reduction by Court of Degree of Offense.

If, when a person has been convicted of an offense, the court, having regard to the nature and circumstances of the offense and to the history and character of the offender, is of the view that it would be unduly harsh to sentence the offender in accordance with the code, the court may enter judgment for a lesser included offense and impose sentence accordingly.

### § 80.31. Prison Terms for First Offenders.

- (a) felony first degree, not less than three (3) years and not more than fifteen (15) years;
- (b) felony second degree, not less than one (1) year and not more than eight (8) years; and
- (c) felony of the third degree, not more than three (3) years

### §§ 80.39-80.39.3. Justice Safety Valve Act.

Notwithstanding any other provision of law, the court may depart from the applicable mandatory minimum sentence if the court finds substantial and compelling reasons on the record that, in giving due regard to the nature of the crime, the history and character of the defendant, and his or her chances of successful rehabilitation, that:

- (a) imposition of the mandatory minimum sentence would result in substantial injustice to the defendant; and
- (b) the mandatory minimum sentence is not necessary for the protection of the public.



## Mandatory Minimums Outside Default Examples

Offense	Statute	Mandatory Minimum Term
1st Degree CSC (1st Offense)	9 GCA § 25.15(b)	10 or 15 years (depending on age of victim)
Family Violence (3rd Offense)	9 GCA § 30.20(h)	1 year
Criminal Mischief	9 GCA § 34.60(c)	48 hours
Home Invasion	9 GCA § 37.240(a)	10 years
1st Degree Robbery	9 GCA § 40.10(b)	10 years
Manufacturing a Schedule II Substance	9 GCA § 67.401.4	20 years
Importation of Narcotics	9 GCA § 67.401.9(b)	20 years (1 <sup>st</sup> Offense)
DWI (1st Conviction)	9 GCA § 92104(a)	48 hours
DWI (4th Conviction)	9 GCA § 92107(a)	1 year



## Specific Range Offenses Outside Default Examples Above Default

Offense	Statute	Extended Range
1st Degree Kidnapping	9 GCA § 22.20(b)	10 – 25 years for 1 <sup>st</sup> Degree Felony
1 <sup>st</sup> Degree Robbery	9 GCA § 40.10(b)	10 – 25 years for 1 <sup>st</sup> Degree Felony
Manufacturing a Schedule I-III Substance.	9 GCA § 67.401.4	20 – 30 years (or more) for 1 <sup>st</sup> Deg Felony
Use of Minor to Sell Drugs	9 GCA § 67.A06	10 – 20 years, or 20 – Life, for 2 <sup>nd</sup> Deg Felony
Driving While Intoxicated – 4th Offense	9 GCA § 92107	1 - 6 years for 3 <sup>rd</sup> Deg Felony
Vehicular Homicide While DWI	9 GCA § 92111	8 – 15 years for 2 <sup>nd</sup> Deg Felony



## Specific Range Offenses Outside Default Examples Below Default

Offense	Statute	Lower Range
Graffiti	9 GCA § 34.70(f)	Max 120 days for Misdemeanor
Theft (as a Second Degree Felony) (1 <sup>st</sup> Offense)	9 GCA § 43.20(a)	Max 5 years for 2 <sup>nd</sup> Deg Felony
Unlawful Use of Telephone Records (as 3 <sup>rd</sup> Deg Felony)	9 GCA § 46.92(a)	Max 3 years for 3 <sup>rd</sup> Deg Felony
Possession of Meth (1 <sup>st</sup> Offense)	9 GCA § 67.401.12	Max 3 years for 3 <sup>rd</sup> Deg Felony
Possessing Firearm in School Zone	9 GCA § 71.60	Max of 3 years for 3 <sup>rd</sup> Deg Felony
Vehicular Homicide (non-DWI)	9 GCA § 92110	Max of 8 years for 2 <sup>nd</sup> Deg Felony



## Directed Sentences

Offense	Statute	Directed Sentence
Aggravated Murder	9 GCA § 16.30(b)	LWOP
Murder	9 GCA § 16.40(b)	Life
Third Degree CSC (2 <sup>nd</sup> Offense)	9 GCA § 25.25(c)	Exactly 10 years
Assisting Escape by Public Servant	9 GCA § 58.25	Exactly 5 years
Manufacturing a Schedule I-III Substance (2 <sup>nd</sup> Offense)	9 GCA § 67.401.4	LWOP
Importation of Narcotics (2 <sup>nd</sup> Offense)	9 GCA § 67.401.9(b)	LWOP
Exportation of Narcotics (2 <sup>nd</sup> Offense)	9 GCA § 67.401.9(b)	LWOP



# Discussion

- CLRC enabling law: “adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties.”
- Amending the default ranges in Chapter 80 might affect the specific prison terms across all other chapters in Title 9.
- The CLRC will do this to the best of our ability given time and resource limitations.
- Sentencing reform.

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## State and Federal Sentencing Commissions

- National Association of Sentencing Commissions
- Alabama Sentencing Commission
- Alaska Judicial Council
- Arkansas Sentencing Commission
- Connecticut Sentencing Commission
- Delaware Sentencing Accountability Commission
- District of Columbia Sentencing Commission
- Illinois Sentencing Policy Advisory Council
- Kansas Sentencing Commission
- Massachusetts Sentencing Commission
- Minnesota Sentencing Guidelines Commission
- Missouri Sentencing Advisory Commission
- Nevada Sentencing Commission
- New Mexico Sentencing Commission
- North Carolina Sentencing and Policy Advisory Commission
- Ohio Criminal Sentencing Commission
- Oregon Criminal Justice Commission
- Pennsylvania Commission on Sentencing
- Utah Sentencing Commission
- Virginia Criminal Sentencing Commission
- Washington State Sentencing Guidelines Commission
- West Virginia Sentencing Commission
- United States Sentencing Commission

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# ATTACHMENT 2

## SUBCOMMISSION ON CRIMINAL PROCEDURE

PRESENTATION  
OCTOBER 8, 2025



# **Report of the Subcommittee on Criminal Procedure**

**October 8, 2025**

**Continued Discussion of Chapters and Presentation of Recommendations for  
Discussion and Approval**

**Members: Hon. Anita A. Sukola (Chair); AAG Valerie Nuesa; Executive Director  
Serge Quenga (ex-officio)**

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**Presented Today**

**9 Guam Code Annotated**

**Chapter 7 – Exemptions and Defenses**

**§§ 7.86, 7.96, Articles 4 and 5 Duty to Retreat**

2



## 9 GCA § 7.86

### § 7.86. Self-Defense Limited.

...

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

...

**Crim Pro Comment:** Amendments for consistency with the terms “serious bodily injury” and “criminal sexual conduct” which are specifically defined in Title 9.



## 9 GCA § 7.96

### § 7.96. When Force Allowed ~~by §§ 7.94 & 7.96~~ is Unavailable.

...

(c) When the defendant is justified under §§ ~~7.84~~ 7.82 to 7.94 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk or injury to innocent persons, the justification afforded by those Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

**Crim Pro Comment:** Amendment in title for clarification. Correction to scrivener’s error in subsection (c). Compare 1977 Guam Criminal & Correctional Code § 7.96(c): “When the defendant is justified under Sections 7.82 to 7.94 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk or injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.” Confirmed with Compiler of Laws.



## No Duty to Retreat

Article 4. Justification [Self-Defense].	Article 5. Castle Doctrine Act.
-1977 Criminal and Correctional Code (MPC) -Amended by Castle Doctrine Act (2014)	-Enacted by PL 32-111 (2014) -Amended by PL 37-122 (2024)
Defense (§7.78) (affirmative defense?)	Immunity (§7.113)
No duty to retreat from dwelling unless <b>initial aggressor</b> :  §7.86. Self-defense Limited.  (b)(A) the defendant is not obliged to retreat from his dwelling, place of work or <b>vehicle*</b> , unless he was the <b>initial aggressor</b> or is assailed in his place of work by another person whose place of work the defendant knows it to be; and  * <i>Vehicle</i> added by Castle Doctrine Act. PL 32-111:2 (2014).	No duty to retreat:  §7.112. Home Protection, Use of Deadly Force, Presumption of Fear of Death or Harm.  (d)(6) “Defensive Force” has the same meaning as <b>self-defense as used in Chapter 7*</b> of Title 9, GCA, except that <b>a lawful occupant of habitable property has no duty or obligation to retreat.</b>  *Self-defense is specifically defined in Article 4.

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## Questions Considered

- Should Castle’s duty to retreat be amended to add an initial aggressor exception to remove any potential conflict with Article 4’s duty to retreat?
- Should no changes be recommended?

6



## Reasons for no Change to Castle:

- The Legislature was clearly aware of the duty to retreat exception in Article 4 when Castle was enacted:
- Castle's duty to retreat provision refers to the definition of self-defense in Article 4.
- When the Legislature enacted Castle in 2014, it amended Article 4's duty to retreat provision to add "vehicle" for consistency with Article 5.
- Just last year, the Legislature expanded Castle's coverage and eliminated the duty retreat from the curtilage of a residence.
- It may be possible for a defendant to assert justification as a defense if their Castle immunity claim fails.
- We have found no Guam caselaw addressing this a potential conflict.
- Castle reflects policy set by the Legislature.



## Recommendation is No Change

Although the duty to retreat language between Articles 4 and 5 is awkward and might eventually present conflict issues to the courts, we do not feel compelled to suggest any changes to the Castle law at this time. We invite discussion and debate on this from all members of the CLRC.

# ATTACHMENT 3

## SUBCOMMISSION ON CRIMES RELATING TO PROPERTY

PRESENTATION  
OCTOBER 8, 2025



# **Report of the Subcommittee on Crimes Relating to Property**

**October 8, 2025**

**Continued Discussion of Chapters and Presentation of Recommendations for  
Discussion and Approval**

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

1



**Presented Today**

**9 Guam Code Annotated**

**Chapter 58 – Escape and Related Offenses**

**Chapter 61 – Riot, Disorderly Conduct and Related Offenses**

2



## Chapter 58 - Escape and Related Offenses

- § 58.60. Promoting Prison Contraband.

...

(b) ...

Any person, including a person in custody, who violates any provision of this Subsection (b) shall be guilty of a misdemeanor, ~~and upon conviction thereof shall be punished by a sentence of imprisonment for a period of no less than thirty (30) days, or by a fine of no less than Five Hundred Dollars (\$500.00), or by both such minimum sentence of imprisonment and fine.~~

(c) ...

Any person, including a person in custody, who violates any provision of this Subsection (c) shall be guilty of a felony in the second degree, ~~and upon conviction shall be punished by a sentence of imprisonment for a period of no less than three (3) years, or by a fine of no less than Five Thousand Dollars (\$5,000), or by both such minimum sentence of imprisonment and fine.~~

- No other changes to this chapter.

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## Chapter 61 - Riot, Disorderly Conduct and Related Offenses

### § 61.10. Riot: Failure to Disperse: Defined & Punished.

(a) A person is guilty of riot, a felony of the third degree, if he participates with four (4) or more others in a course of disorderly conduct:

(1) with intent to commit or facilitate the commission of a felony or misdemeanor;

(2) with intent to prevent or coerce official action; or

(3) when he or any other participant to his knowledge uses or plans to use a firearm or other deadly weapon.

(b) Failure to Disperse: Where four (4) or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance or alarm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who knowingly refuses or knowingly fails to obey such an order commits a misdemeanor.

**PROPERTY COMMENT:** “Failure to disperse” added as a heading for clarity. Moved mental state element of “knowingly” to cover both “refuses” and “fails” in the offense.

4



# 9 GCA § 61.20

## § 61.20. Harassment; Defined & Punished.

A person commits a petty misdemeanor if, with intent to harass another, he:

(a) makes, or causes to be made, a communication anonymously or at extremely inconvenient hours, or uses fighting words likely to provoke an immediate violent response in offensively coarse language, or any other manner likely to cause annoyance or alarm;

(b) subjects another to striking, kicking, shoving or other offensive touching, or threatens to do so; or

(c) engages in any other course of alarming conduct or of repeatedly committed acts which alarm or seriously annoy such other person serving no legitimate purpose of the defendant.

**PROPERTY COMMENT:** Substituted “offensively coarse language” for “fighting words likely to provoke an immediate violent response” to mitigate potential First Amendment challenges.



# 9 GCA § 61.20 (cont)

(d) Every person who with intent to annoy, telephones, telefaxes, or communicates by use of any telephone network, data network, text message, instant message, computer, computer network, or computer system with another person and addresses to or about such other person any obscene language is guilty of a misdemeanor.

(e) Every person who makes a telephone call, telefax transmission, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system with intent to annoy and without disclosing his true identity to the person answering the telephone or receiving the telefax transmission or transmission received from any telephone network, data network, text message, instant message, computer, computer network, or computer system, whether or not conversation or return transmission ensues from making the telephone call or the transmission, is guilty of a misdemeanor.

(f) Any offense committed by use of a telephone, telefax machine, or any telephone network, data network, text message, instant message, computer, computer network, or computer system as set out in this Section may be deemed to have been committed at either the place at which the telephone calls, telefax transmissions, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system were made or received. In the event that a customer of a telephone service provider, wireless service provider, or an internet service provider receives harassing telephone calls or transmissions received via or by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system, such customer may file an injunction complaint under the name of John Doe, although the telephone service provider may release the name, address, and telephone number of the plaintiff to the Superior Court of Guam. The telephone service provider, wireless service provider, or an internet service provider shall disconnect all telephone services or computer or wireless services to any subscriber who has violated the provisions of this Section more than one (1) time.

(g) Subsections (d) or (e) of this Section are violated when the person acting with intent to annoy makes a telephone call, telefax transmission, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system requesting a return call or return transmission and performs the acts prohibited under such Subsections upon receiving the return call or transmission.

(d) Communicates with another person, directly or indirectly, by any means — including telephone, written correspondence, electronic message, digital platform, or other medium — without legitimate purpose and with intent to harass, annoy, or alarm, including but not limited to:

(1) initiating contact at extremely inconvenient hours;

(2) uses fighting words likely to provoke an immediate violent response;

(3) concealing or misrepresenting identity to initiate the communication;

(4) causing a communication to be initiated or sent by a third party or automated process; or

(5) engaging in any other course of conduct serving no legitimate purpose and likely to cause annoyance or alarm.

(e) Knowingly permits or authorizes the use of one’s computer network, digital account, electronic communications service, or similar resource to engage in conduct described in subsection (3), with the intent to harass, annoy, or alarm another person.

**PROPERTY COMMENT:** Repetitive technology-specific language rewritten and consolidated into broad, medium-neutral provisions.



## 9 GCA § 61.30

### § 61.30. Loitering or Prowling; Defined & Punished; Defenses.

(a) A person commits a violation *if* he loiters *or* prowls in a place, at a time, *or* in a manner not usual for law-abiding individuals under circumstances that warrant justifiable and reasonable alarm for the safety of persons *or* property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a peace officer, refuses to identify himself, *or* manifestly endeavors to conceal himself *or* any object.

~~A person commits a violation *if* he loiters *or* prowls in *or* in close proximity to a school bus stop, at a time, *or* in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons *or* property in the vicinity.~~

A person commits a violation if he or she loiters or remains in or about a school bus stop, not having any reason of relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same.

**PROPERTY COMMENT:** Added “justifiable and reasonable” standard to address vagueness concerns. Rewrote school bus stop provision to model New York Penal Law § 240.35(5) and avoid vagueness concerns.



## 9 GCA § 61.35

### § 61.35. Obstructing the Public Ways; Defined & Punished.

(a) A person commits a petty misdemeanor if he or she unreasonably obstructs the free passage of foot or vehicular traffic on any public way, and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement officer.

~~(b) A person commits a petty misdemeanor if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way for the purpose of handbilling as defined by Title 16 GCA Section 3701 or for soliciting as defined by Title 16 GCA Section 3341.~~

~~(b)(e)~~ As used in this Section, public way means any public highway or sidewalk, private way laid out under authority of statute, way dedicated to public use, or way upon which the public has a right of access or has access as invitees or licensees.

**PROPERTY COMMENT:** Remove (b) as redundant with subsection (a) and avoid potential First Amendment content discrimination.



## 9 GCA § 61.40

### § 61.40. Disrupting Public Gatherings, Defined & Punished.

A person commits a violation if, with intent to prevent or disrupt a lawful meeting, procession or gathering, he does any act tending to obstruct or interfere with it physically, ~~or makes any utterance, gesture or display designed to outrage the sensibilities of the group.~~

**PROPERTY COMMENT:** Avoid First Amendment challenges by removing subjective speech restrictions and focus on actual disruption.

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## 9 GCA § 61.45

### § 61.45. Desecration Defined & Punished.

(a) A person commits a misdemeanor if he intentionally desecrates any public monument or structure, **insignia, symbol**, or place of worship or burial, ~~or if he intentionally desecrates the national flag or any other object of veneration by the public or a substantial segment thereof in any public place.~~

(b) As used in this Section, desecrate means defacing, damaging, polluting or otherwise physically mistreating in a way that the person knows will outrage the sensibilities of persons likely to observe or discover his action.

**PROPERTY COMMENT:** Remove flag desecration provision which conflicts with Supreme Court *Texas v. Johnson* (1989). Replace subjective and broad “object of veneration” language with “insignia” and “symbol” modeled after N.J. § 2C:33-9

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## 9 GCA § 61.60

### § 61.60. Creation of Hazards on Land: Penalty.

A person is guilty of a petty misdemeanor when he:

(a) abandons, keeps or knowingly permits to remain on premises accessible to children under his control an unused refrigerator, icebox, deep freeze locker or similar container having a capacity of one and one-half (1/2) cubic feet or more from which the door or the hinges and latch mechanism has not been removed. This Subsection shall not apply to a person engaged in the business of selling refrigerators, iceboxes or deep freeze lockers who keeps them for sale, if he takes reasonable precautions to secure the door of any such refrigerator, icebox or deep freeze locker so as to prevent entrance by children small enough to fit therein.

(b) being the owner or otherwise having possession of property upon which an abandoned well or cesspool is located, fails to cover the same with suitable protective construction.

**PROPERTY COMMENT:** Add “accessible to children” phrase to match intent of law and protect from overbreadth. This approach would mirror Cal. Penal Code § 402b and New York Penal Law § 270.



## 9 GCA § 61.65

### § 61.65. Creation of Certain Hazards; Oil Pollution by Vessels: Definitions: Penalty.

(a) Except in case of unavoidable accident, collision or stranding, and except as otherwise permitted by law, a person commits a misdemeanor if he discharges or permits the discharge of oil by any methods, means or manner, into or upon the navigable waters of Guam from:

(1) Any vessel using oil for the generation of propulsion power; or

(2) Any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements, and such as may be required under the laws of the United States and the government of Guam, and the rules and regulations prescribed thereunder.

(b) As used in this Section: ~~“private place” means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access;~~

(1) Oil means oil of any kind or in any form, including fuel oil, oil sludge and oil refuse;

(2) Navigable Waters of Guam means all portions of the sea within the territorial jurisdiction of the government of Guam.

(3) Person means an individual, partnership, corporation, or association, any owner, master, officer, or employee of the government of Guam.

**PROPERTY COMMENT:** Add separate sub-sections (1) and (2) to make clear that there are two types of vessels defined.

Fix the transcription error that occurred in sub-section (b) by removing the “private place” definition and re-inserting the definition of “person” from the Guam Penal Code.



# 9 GCA § 61.70

## § 61.70. Discharge of Firearms.

(a) A person commits a misdemeanor who willfully discharges a firearm:

- (1) At any occupied dwelling, building or other structure;
- (2) At any utility pole or light fixture, or line or device for transmittal of power or communications of any kind;
- (3) At any sign, signboard or notice placed upon or affixed to any property belonging to the government of the territory;
- (4) Into the air; or

~~(5) Within fifty (50) yards of any occupied dwelling, building or other structure without the prior consent of the owner thereof or his agent or of the person in lawful possession thereof, with the exception of the discharge of firearms at a properly constructed shooting range approved by the Director of the Department of Public Safety or by a peace officer in pursuit of his duty as a peace officer.~~

### (b) Penalties

~~(1) Any individual found to commit a misdemeanor within the provisions of this section may shall be assessed a fine of no less than \$500 and no more than \$1,000 per offense, the firearm used may shall be confiscated upon order of the court and its registration certificate, and all rights thereunder, may shall be suspended for one (1) year by the court. Any individual so convicted who has legal possession of more than one firearm shall have only the firearm used in the commission of the crime confiscated and its registration suspended.~~

~~(2) Any firearm so confiscated shall not be sold or transferred to another prior to completion of the sentence imposed.~~

~~(3) No individual found guilty under the provisions of this section shall purchase any other firearm during the duration of the suspension of his or her firearm's registration card.~~

~~(b) A person commits a misdemeanor who willfully discharges a firearm within fifty (50) yards of any occupied dwelling, building or other structure without the prior consent of the owner thereof or his agent or of the person in lawful possession thereof, with the exception of the discharge of firearms at a properly constructed shooting range approved by the Director of the Department of Public Safety or by a peace officer in pursuit of his duty as a peace officer.~~

**PROPERTY COMMENT:** Reorganize to separate the elements of the offense from the penalties. Change mandatory penalties to discretionary to address possible Eighth Amendment Excessive Fines clause concerns.

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# No Change

§ 61.15. Disorderly Conduct; Defined & Punished.

§ 61.20.1. Definitions.

§ 61.25. Public Drunkenness; Defined & Punished.

§ 61.50. Disinterring a Corpse; Punished.

§ 61.55. Endangering Health & Safety: Defined; Penalty.

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