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# Judiciary of Guam

Guam Criminal Law and Procedure Review Commission  
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EXECUTIVE DIRECTOR

**GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
2025 FOURTH QUARTER REPORT  
SUBMITTED TO THE**

GOVERNOR OF GUAM,  
SPEAKER OF THE GUAM LEGISLATURE, AND  
CHIEF JUSTICE OF GUAM  
FEBRUARY 23, 2026

GUAM CRIMINAL LAW AND PROCEDURE REVIEW COMMISSION  
JUDICIARY OF GUAM  
GUAM JUDICIAL CENTER  
120 WEST O'BRIEN DRIVE  
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## PREFACE

The Guam Criminal Law and Procedure Review Commission (CLRC or Commission) submits its fourth quarter report for 2025 summarizing its activities as required by 1 GCA § 25.07(a). Because the CLRC began operations in January of 2023, quarterly reports align with the calendar year instead of the fiscal year. This fourth quarter report summarizes activities from October 1, 2025 through December 31, 2025.

## CLRC STATUTORY AUTHORITY

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

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

## CLRC STAFF AND MEMBERS

During the fourth quarter of 2025, the Commission consisted of the following members and staff.

Governor’s Appointees	Hon. Maria T. Cenzon, Hon. Anita A. Sukola, Ms. Valerie Reyes
Speaker’s Appointees	Attorney Phillip Tydingco, Attorney Michael Phillips, Attorney Christine Tenorio
Chief Justice’s Appointees	Hon. Jonathan R. Quan, Attorney F. Randall Cunliffe, Mr. Monty McDowell
Guam Bar President Appointees	Attorney Joseph B. McDonald, Attorney William B. Brennan
Statutory Members (or Designees)	Attorney General of Guam (Designee AAG Valerie Nuesa), Chief of Police (Designee Sgt. Michael Elliott), Director of Corrections Fred Bordallo, Executive Director of Public Defender Service Corp (Designee Deputy Director John Morrison)
Compiler of Laws	Attorney Geraldine Cepeda (ex-officio)
Staff	Executive Director Andrew Serge Quenga (ex-officio), Administrative Assistant Lisa Ibanez, Research Attorney Yusuke Haffeman-Udagawa, Research Attorney Gordon Anderson, Research Attorney Andrew Strege
Volunteer	Hon. Sean Brown, Hon. Elizabeth Barrett-Anderson, Attorney Kat Siguenza, Attorney Leonardo Rapadas, Attorney Kristine B. Borja, Attorney Zachary Taimanglo, Chief Probation Officer Rossanna

Villagomez-Aguon, Chief Parole Officer Michael P. Quinata, Probation Officer Supervisor Jeremiah J.A. Cruz, Deputy Marshal III Kennedy G. Robinson, Deputy Marshal II Dodd Siegfred V. Mortera, Jr., Attorney Kristina Baird, Attorney Mary Hill
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## **SIGNIFICANT CLRC ACTIVITIES OCTOBER – DECEMBER 2025**

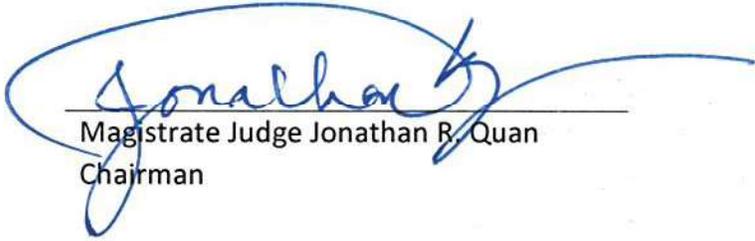
During the fourth quarter of 2025, the Commission held a Plenary Meeting on October 8, 2025. Members deliberated on a range of agenda items, including recommendations to amend sections and chapters of the Criminal Code of Guam. The agendas, meeting packets, and YouTube video links for these meetings are available on the CLRC website. During these meetings, the following presentations were made:

- October 8, 2025, Plenary Meeting
  - The Subcommittee on Criminal Procedure continued its review of Chapter 7 (Exemptions and Defenses). Details of this presentation are in the minutes of this meeting posted on the CLRC website. All recommendations that were approved for moving to the final reading file or tabled for further discussion are memorialized in Attachment 1, which include proposed amendments with changes tracked.
  - The Ad Hoc Subcommittee on Corrections-Related Chapters presented its review of Chapter 80 (Disposition of Offenders). Details of this presentation are in the minutes of this meeting posted on the CLRC website. All recommendations that were approved for moving to the final reading file or tabled for further discussion are memorialized in Attachment 2, which include proposed amendments with changes tracked.
  - The Subcommittee on Crimes Involving Property presented its continuing review of Chapter 58 (Escape and Related Offenses) and Chapter 61 (Riot, Disorderly Conduct and Related Offenses). Details of this presentation are in the minutes of this meeting posted on the CLRC website. All recommendations that were approved for moving to the final reading file or tabled for further discussion are memorialized in Attachment 3, which include proposed amendments with changes tracked.
- The 2025 third quarter report of the Commission was issued on October 17, 2025, and is available on the CLRC webpage.
- Bill 232-38, containing the Commission’s recommendations in the Interim Report to the Guam Legislature dated June 13, 2025, was introduced on November 20, 2025. This bill was sent to the Commission for review on December 15, 2025. Commission staff immediately began review of Bill 232.

## **CONCLUSION**

During the fourth quarter of 2025, the Commission continued to make progress in the review of the Criminal Code of Guam. The work of the CLRC continues to the best of the ability of each member. Our Subcommittees face a daunting task reviewing thousands of criminal statutes throughout the Guam Code Annotated. Apart from the very small full-time staff of the CLRC, each member dedicates significant time to reviewing their

assigned chapters and sections of the Criminal Code and discussing any proposed changes in working sessions with their respective Subcommissions. Our appointed and volunteer members include full-time attorneys with active caseloads, high-ranking government law enforcement officials, and private citizens with full-time work obligations. Chairman Quan and I thank all members for their commitment and diligence to the work of the Commission.



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Magistrate Judge Jonathan R. Quan  
Chairman



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Andrew Serge Quenga  
Executive Director

**ATTACHMENT 1**

**RECOMMENDATIONS OF THE SUBCOMMISSION ON CRIMINAL PROCEDURE  
PRESENTED AT THE PLENARY MEETING OF OCTOBER 8, 2025**

**TITLE 9 GUAM CODE ANNOTED**

**§ 7.86. Self-Defense Limited.**

**CLRC COMMENT:** Tabled for further discussion.

**§ 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.

**CLRC 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.

**Chapter 7, Article 4 (Justification) and Article 5 (Castle Doctrine Act).**

**CLRC COMMENT:** No change.

## ATTACHMENT 2

### RECOMMENDATIONS OF THE AD HOC SUBCOMMISSION ON CORRECTION-RELATED CHAPTERS PRESENTED AT THE PLENARY MEETING OF OCTOBER 8, 2025

#### TITLE 9 GUAM CODE ANNOTATED

##### § 80.30. Duration of Imprisonment.

CLRC COMMENT: No change.

##### ~~§ 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:~~

~~(a) In the case of a felony of the first degree, for a sentence of life imprisonment;~~

~~(b) In the case of a felony of the second degree, the court may impose a sentence of not less than five (5) years and not more than twenty (20) years;~~

~~or (c) In the case of a felony of the third degree, the court may impose a sentence of not less than three (3) years and not more than ten (10) years.~~

CLRC COMMENT: Repeal this section in its entirety. This section is applicable only to cases designated in §§ 80.38 and 80.42. The Guam Supreme Court held § 80.38 unconstitutional in *People v. Muritok*, 2003 Guam 21, and § 80.42 contains a similarly problematic provision and is also recommended for repeal.

##### § 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.

CLRC COMMENT: Amend for consistency with *People v. Muritok*, 2003 Guam 21, which makes § 80.36 invalid by necessary implication. No change to imprisonment terms.

##### ~~§ 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.~~

CLRC COMMENT: Repeal this section in its entirety. This section is applicable only to cases designated in §§ 80.40 and 80.42. The Guam Supreme Court held § 80.38 unconstitutional in *People v. Muritok*, 2003 Guam 21, and §§ 80.40 and 80.42 contain similarly problematic provisions and are also recommended for repeal.

##### ~~§ 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:~~

~~(a) The offender is a persistent offender whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the offender is over twenty one (21) years of age and has previously been convicted as an adult of two (2) felonies or of one (1) felony and two (2) misdemeanors.~~

~~(b) The offender is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted. The court shall not make such a finding unless:~~

~~(1) the offender is being sentenced for two (2) or more felonies, or is already under sentence of imprisonment for felony, or admits in open court the commission of one or more other felonies and asks that they be taken into account when he is sentenced; and~~

~~(2) the longest sentences of imprisonment authorized for each of the offender's crimes, including admitted crimes taken into account, if made to run consecutively, would exceed in length the maximum of the extended term imposed.~~

~~(c) The offender is a dangerous, mentally abnormal person whose commitment for an extended term is necessary for protection of the public.~~

~~(1) The court shall not make such a finding unless the offender has been subjected to a psychiatric examination resulting in the conclusions that his mental condition is gravely abnormal;~~

~~(2) that his criminal conduct has been characterized by a pattern of repetitive or compulsive behavior or by persistent aggressive behavior with heedless indifference to consequences; and~~

~~(3) that such condition makes him a serious danger to others.~~

**CLRC COMMENT:** Repeal this section in its entirety. As noted in the Compiler of Laws comment for this section, the Guam Supreme Court in *People v. Muritok*, 2003 Guam 21, struck down this provision as unconstitutional, concluding that it impermissibly authorizes the court to sentence a defendant to an extended term of imprisonment, in violation of the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

**~~§ 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:~~

~~(a) The offender is a persistent offender whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the offender has previously been convicted as an adult of two (2) crimes.~~

~~(b) The offender is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted. The court shall not make such a finding unless:~~

~~(1) the offender is being sentenced for two (2) or more misdemeanors or one misdemeanor and two (2) or more petty misdemeanors or is already under sentence of imprisonment for crimes of such grades, or admits in open court the commission of crimes of such grades and asks that they be taken into account when he is sentenced; and~~

~~(2) the longest sentences of imprisonment authorized for each of the offender's crimes, including admitted crimes taken into account, if made to run consecutively, would exceed in length the maximum of the extended term imposed.~~

~~(c) The offender is an alcoholic, narcotic addict or person of abnormal mental condition who requires rehabilitative treatment for a substantial period of time. The court shall not make such a finding unless with respect to the particular category to which the offender belongs, the Director of Corrections has certified that there is a specialized institution or facility which is satisfactory for the rehabilitative treatment of such persons.~~

**CLRC COMMENT:** Repeal this section in its entirety. As noted in the Compiler of Laws comment for this section, the Guam Supreme Court in *People v. Muritok*, 2003 Guam 21, struck down § 80.38 (Extended Terms for Felonies) as unconstitutional, concluding that it impermissibly authorizes the court to sentence a defendant to an extended term of imprisonment, in violation of the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). While § 80.40 was not ruled on in *Muritok*, it has the same constitutional infirmity as applied to misdemeanors in that it impermissibly authorizes the court, rather than a jury, to sentence a defendant to an extended term of imprisonment.

#### **~~§ 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:~~

~~(a) the person's record, both within and without the correctional system, reveals a clear pattern of assaultive or sexually aggressive behavior; and~~

~~(b) there is a substantial risk that he will at some time in the future inflict death or serious bodily injury upon another.~~

~~In making such a finding, the court shall proceed upon the same basis as in an original sentencing hearing and the person shall have the same rights as any person being sentenced.~~

**CLRC COMMENT:** Repeal this section in its entirety. The Guam Supreme Court in *People v. Muritok*, 2003 Guam 21, struck down § 80.38 (Extended Terms for Felonies) as unconstitutional, concluding that it impermissibly authorizes the court to sentence a defendant to an extended term of imprisonment, in violation of the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). While § 80.42 was not ruled on in *Muritok*, it has the same constitutional infirmity as it impermissibly authorizes the court, rather than a jury, to sentence a defendant to an extended term of imprisonment. § 80.42 provides for this unconstitutional extended term on the petition of the Director of Corrections.

#### **~~§ 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.~~

**CLRC COMMENT:** Repeal this section in its entirety. This section is applicable only to §§ 80.38, 80.42, and itself. The Guam Supreme Court held § 80.38 as unconstitutional in *People v. Muritok*, 2003 Guam 21, and § 80.40 contains a similarly problematic provision and is also recommended for repeal.

ATTACHMENT 3

RECOMMENDATIONS OF THE SUBCOMMISSION ON CRIMES INVOLVING PROPERTY PRESENTED AT THE  
PLENARY MEETING OF OCTOBER 8, 2025

TITLE 9 GUAM CODE ANNOTATED

**§ 58.10. General Definitions.**

CLRC COMMENT: No change.

**§ 58.20. Felony Escape; Defined and Punished.**

CLRC COMMENT: No change.

**§ 58.25. Same: Punished.**

CLRC COMMENT: No change.

**§ 58.30. Ordinary Escape.**

CLRC COMMENT: No change.

**§ 58.40. Assisting in Escape by Public Servant; Defined and Punished.**

CLRC COMMENT: No change.

**§ 58.50. Providing Escape Implements; Defined and Punished.**

CLRC COMMENT: No change.

**§ 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.~~

CLRC COMMENT: Deletion of mandatory minimums for consistency with 9 GCA Chapter 80 default sentencing provisions. No other changes in this section.

**§ 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.

**CLRC COMMENT:** "Failure to disperse" added as a heading for clarity. The mental state element of "knowingly" moved to clarify that it covers both "refuses" and "fails" in the offense.

#### **§ 61.15. Disorderly Conduct; Defined & Punished.**

**CLRC COMMENT:** No change.

#### **§ 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 ~~in offensively coarse language~~ uses fighting words likely to provoke an immediate violent response, 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;

(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; or

(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.~~ 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) ~~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. 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 (b), with the intent to harass, annoy, or alarm another person.~~

~~(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.~~

**CLRC COMMENT:** Subsection (a)'s use of "offensively coarse language" is replaced to mitigate potential First Amendment challenges. Subsections (d)-(g) revised and consolidated into amended subsections (d) and (e) to replace repetitive technology-specific language with broad, medium-neutral provisions.

#### **§ 61.20.1. Definitions.**

**CLRC COMMENT:** No change.

#### **§ 61.25. Public Drunkenness; Defined & Punished.**

**CLRC COMMENT:** No change.

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

(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.

...

**CLRC COMMENT:** Subsection (a) adds “justifiable and reasonable” standard to address vagueness concerns, revises school bus stop provision after New York Penal Law § 240.35(5)(Loitering) to avoid vagueness concerns, and reorganizes into two subsections for clarity. No other changes to this section.

**§ 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)(c)~~ 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.

**CLRC COMMENT:** Removes (b) as redundant with subsection (a) and to avoid potential First Amendment content discrimination challenge.

**§ 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.~~

**CLRC COMMENT:** Removes subjective speech restrictions and focus on actual disruption to avoid potential First Amendment challenges.

**§ 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.

**CLRC COMMENT:** Subsection (a) removes flag desecration provision which conflicts with the U.S. Supreme Court decision, *Texas v. Johnson* (491 U.S. 387). Replaces subjective and broad term “object of veneration” with “insignia” and “symbol” modeled after N.J. § 2C:33-9 (Desecration of Venerated Objects).

**§ 61.50. Disinterring a Corpse; Punished.**

**CLRC COMMENT:** No change.

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

**CLRC COMMENT:** No change.

**§ 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.

**CLRC COMMENT:** Subsection (a) adds “accessible to children” phrase to match intent of law and protect from overbreadth. This approach mirrors Cal. Penal Code § 402b and New York Penal Law § 270.10.

**§ 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; and

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

**CLRC COMMENT:** Subsection (a) reorganized into separate subsections for clarity. Subsection (b) corrects historical clerical errors discovered by reference to the 1947 Penal Code of Guam and subsequent criminal codes. The reference to “private place” is nonsensical and likely an inadvertent insertion. The definition of “person” from the 1947 Penal Code was apparently omitted from subsequent codifications but is relevant to this section.

**§ 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.~~

**CLRC COMMENT:** This section is reorganized to separate the elements of the offense from the penalties for clarity. Revises mandatory penalties to discretionary to address possible Eighth Amendment Excessive Fines Clause concerns.