

MINA' TRENTAI UNU NA LIHESLATURAN GUAHAN
2011 (FIRST) Regular

Bill No. 1024-71 (6912)

Introduced by:

DENNIS G. RODRIGUEZ, Jr.

**AN ACT RELATIVE TO MENTALLY ILL AND
CIVIL COMMITMENTS, BY REPEALING AND
REENACTING §82101 ET SEQ. §82810 OF CHAPTER
82, TITLE 10, GUAM CODE ANNOTATED.**

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BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Chapter 82 of Title 10, Guam Code Annotated, is repealed and reenacted, to read:

“Chapter 82
Mentally Ill Persons

Article 1. General.

§82101 Definitions

§82102 Burden of Proof; Sealed Records

Article 2. 72-Hour Hold for Treatment and Evaluation

§82201 Authority to Evaluate a person for Involuntary Hospitalization.

§82202 Authority for Bringing an Individual to a Qualified Mental Health Professional for Consideration of Involuntary Hospitalization.

§82203 Discharge.

1 §82204 Preservation and Safeguarding of Personal Property of Person Taken into
2 Custody.

3 §82205 Relation to Pending Criminal Actions.

4 **Article 3. Commitment for 28 Days**

5 §82301 Authority to Detain for Additional 28 Days.

6 §82302 Stay of Commitment.

7 §82303 Petition: Who are to Receive Copies.

8 §82304 Maximum Period: When Termination of Certification and Release of
9 Involuntary Patient Required.

10 §82305 Civil Liability for Knowingly and Willfully Detaining a Patient for More
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12 §82306 Immunity from Liability of Qualified Mental Health Professional for
13 Action by Patient Released within the Designated Period.

14 §82307 Permitting Certified Patient to Leave Facility for Short Periods

15 **Article 4. Commitment for 90 Days**

16 §82401 90-day Extension of Commitment.

17 §82402 Procedure.

18 §82403 Findings; Additional Extension.

19 §82404 Release Before Expiration of 90 Days; Notice to Court.

20 §82405 Immunity of Facility From Liability for Actions of Patient Released.

21 **Article 5. Conditional Outpatient Treatment**

22 §82501 Application.

23 §82502 Hearing Procedure.

24 §82503 Treatment Alternatives.

1 §82504 Failure to Comply.

2 §82505 Duration.

3 **Article 6. Voluntary Commitment**

4 §82601 Authority to Receive Voluntary Patients.

5 §82602 Discharge of Voluntary Patients.

6 §82603 Right to Release on Application.

7 **Article 7. Writ of Habeas Corpus**

8 §82701 Right to Hearing by Habeas Corpus; Request for Release; Duties of Staff
9 Member; Notices Required.

10 §82702 Jurisdiction; Time for Granting Writ; When Immediate Release Required.

11 §82703 Finding Under 82402 Not Admissible as Evidence in Other
12 Proceeding.

13 §82704 Immunity from Liability for Persons Exercising Authority in Detention
14 and Treatment Proceedings.

15 **Article 8. Rights of Patients**

16 §82801 Enumeration of Rights; Posting of List in English, Chamorro and
17 Tagalog.

18 §82802 Right to Communication and Visitation; Exercise of Civil Rights.

19 §82803 Who May Deny Rights to Patient; Grounds; Entry in Treatment Records;
20 Information to be Made Available to Patient.

21 §82804 Rights Not Specifically Denied to be Retained.

22 §82805 Confidentiality of Information in Records; Persons to to whom
23 Disclosure Authorized.

24 §82806 Compilation and Publication of Statistical Data Authorized.

1 §82807 Action for Wrongful Release of Confidential Information or Records;
2 Penalty or Treble Damages; Injunction.
3 §82808 Presumption of Incompetency Due to Evaluation or Treatment
4 Prohibited.
5 §82809 Restraints.
6 §82810 Incarceration.

7 **Article 1**

8 **General**

9 **§82101. Definitions.** As used in this Chapter, unless the context requires otherwise:

10 (a) "*Chemically dependent person*" means any person (1) determined as being
11 incapable of self- management or management of personal affairs by reason of the
12 habitual and excessive use of alcohol, drugs, or other mind-altering substances; and (2)
13 whose recent conduct as a result of habitual and excessive use of alcohol, drugs, or
14 other mind-altering substances poses a substantial likelihood of physical harm to
15 himself or others, including an unborn child as defined in Title 19 G.C.A. §1104, as
16 demonstrated by (i) a recent attempt or threat to physically harm himself or others, (ii)
17 evidence of recent serious physical problems, or (iii) a failure to obtain necessary food,
18 clothing, shelter, or medical care.

19 (b) "*Department*" means the Department of Mental Health and Substance
20 Abuse and Director means the Director of the Department of Mental Health and
21 Substance Abuse.

22 (c) "*Developmentally disabled person*" means any person: (1) who has been
23 diagnosed as having significantly sub-average intellectual functioning existing

1 concurrently with demonstrated deficits in adaptive behavior and who manifests these
2 conditions prior to the person's 22nd birthday; and (2) whose recent conduct is a result
3 of a developmental disability and poses a substantial likelihood of physical harm to
4 himself or others in that there has been (i) a recent attempt or credible threat to
5 physically harm self or others, or (ii) a failure and inability to obtain necessary food,
6 clothing, shelter, safety, or medical care.

7 (d) “*Facility*” means a public or privately operated institution which has been
8 designated by the Director as being adequately equipped for the care of persons
9 suffering from a grave disability, mental disorder, developmental disability or chemical
10 dependence.

11 (e) “*Gravely disabled*” means a person who, as a result of mental disorder,
12 developmental disability or chemical dependence, is 1) unable to use the elements of
13 life which are essential to health or safety, including food, clothing or shelter, even
14 though provided to the person by others or 2) unable to make reasoned choices such
15 that the health or safety of the person or others is seriously endangered.

16 (f)(1) “*Mental disorder*” means an organic disorder of the brain or a substantial
17 psychiatric or psychological disorder of thought, mood, perception, orientation, or
18 memory which grossly impairs judgment, behavior, capacity to recognize reality, or to
19 reason or understand, which is manifested by instances of grossly disturbed behavior or
20 faulty perceptions and poses a substantial likelihood of physical harm to himself or
21 others as demonstrated by: (i) a failure to obtain necessary food, clothing, shelter, or
22 medical care as a result of the impairment;(ii) an inability for reasons other than
23 indigence to obtain necessary food, clothing, shelter, or medical care as a result of the

1 impairment and it is more probable than not that the person will suffer substantial
2 harm, significant psychiatric deterioration or debilitation, or serious illness, unless
3 appropriate treatment and services are provided;(iii) a recent attempt or threat to
4 physically harm self or others; or (iv) recent and volitional conduct involving
5 significant damage to substantial property.

6 (2) A person is not mentally disordered under this section if the impairment is
7 solely due to: (i) epilepsy; (ii) developmental disability; (iii) brief periods of
8 intoxication caused by alcohol, drugs, or other mind-altering substances; or (iv)
9 dependence upon or addiction to any alcohol, drugs, or other mind-altering substances.

10 (g) “*Patient*” means a person under evaluation, care or treatment in a facility
11 pursuant to the provisions of this Chapter.

12 (h) “*Professional staff*,” “*professional person*” or “*qualified mental health*
13 *professional*” means a licensed professional designated by the Director as specially
14 qualified by training or experience in the diagnosis of mental or related illness. A
15 psychiatrist or a clinical psychologist shall be so designated.

16 (i) “*Treatment*” means any therapy recognized by the Substance Abuse and
17 Mental Health Services Administration or other recognized professional medical body,
18 such as the American Psychiatric Association or the American Psychological
19 Association.

20 **§82102. Burden of Proof; Sealed Record**

21 (a) For all purposes under this Chapter, the determination of issues of fact
22 before the court or jury shall be as follows:

1 (1) In all cases the burden of proof shall be upon the agency or individual
2 seeking commitment.

3 (2) The standard of proof shall be by clear and convincing evidence.

4 (b) These cases shall be sealed by the Clerk of Court and shall be revealed only
5 to the respondent, the treating or evaluating mental health professional, attorneys of
6 record, or the legal guardian of the respondent.

7 **Article 2**

8 **72-Hour Hold for Treatment and Evaluation**

9 **§82201. Authority to Evaluate a Person for Involuntary Hospitalization.**

10 (a) A qualified mental health professional shall perform an examination of any
11 person who is brought to the Department and is alleged to be gravely disabled and as a
12 result thereof is a danger to himself or others. If the Department receives a request
13 from the Department of Corrections (DOC), the Department of Youth Affairs (DYA)
14 or the Office of the Attorney General to examine a person at either DOC or DYA, the
15 Department shall examine the person within 72 hours.

16 (b) A qualified mental health professional shall form an opinion as to whether
17 the proposed patient is gravely disabled and as a result thereof, serious physical harm
18 to the proposed patient or others is likely if the proposed patient is not immediately
19 confined. The 72-hour hold application shall state the circumstances under which the
20 proposed patient's condition was brought to the attention of the qualified mental health
21 professional, the opinion reached by the professional, and the basis of the opinion.

1 (c) If a qualified mental health professional is of the opinion that serious
2 physical harm to the proposed patient or others is likely if the proposed patient is not
3 immediately confined, the proposed patient may be admitted to a facility for evaluation
4 and treatment for a period not to exceed 72 hours, Saturdays, Sundays, and holidays
5 excluded.

6 (d) If in the judgment of the qualified health professional providing the
7 evaluation or treatment, the person can be properly treated without being detained, the
8 person shall be provided an evaluation, crisis intervention and referral for other
9 services on a voluntary basis.

10 (e) Each person admitted for a 72-hour hold for evaluation and treatment shall
11 be released prior to the lapse of that period, if in the opinion of the qualified mental
12 health professional, that person no longer requires evaluation or treatment on an
13 involuntary status. A person may stay longer than 72 hours for treatment on a
14 voluntary basis if that is clinically indicated.

15 (f) Neither a qualified mental health professional who has ordered the detention
16 of a person under this Article; nor a person on the staff at the facility shall be held
17 liable under a criminal or civil action for the detention of the person in accordance with
18 this Article for up to 72 hours, Saturdays, Sundays and holidays excepted.

19 **§82202. Authority for Bringing an Individual to a Qualified Mental Health**
20 **Professional for Consideration of Involuntary Hospitalization.**

21 (a) Any person may take another to the Department for examination by a
22 qualified mental health professional.

1 (b) The person who brought the proposed patient to the Department for
2 examination shall provide a written or oral report that summarizes the underlying
3 reasons for the desired admission. The Department shall gather that information which
4 has been made available at the time of presentation and document the information in its
5 record.

6 (c) If a peace officer has probable cause to believe that a person is a gravely
7 disabled and as a result thereof is an imminent danger to himself or others, he shall
8 bring the person to the Department for an examination. If the qualified mental health
9 professional conducting the examination does not find the person to be a danger to
10 himself or others, he must notify the peace officer if he is still present, or the police
11 department, if the peace officer has certified in writing that the person may be charged
12 with a crime as specified in the written report of the peace officer.

13 **§82203. Discharge.** An individual detained under this Chapter for an intake
14 examination by a qualified mental health profession at the Department shall be
15 discharged if the attending mental health professional concludes that the referred
16 individual is not gravely disabled or that as a result thereof, serious physical harm to
17 the individual or others is not likely without an immediate commitment.

18 **§82204. Preservation and Safeguarding of Personal Property of Person Taken**
19 **Into Custody.**

20 (a) At the time a patient is taken into custody for evaluation, or within a
21 reasonable time thereafter, unless a responsible relative or the legal guardian of the
22 patient is in possession of the patient's personal property, the person taking him into
23 custody shall take reasonable precautions to preserve and safeguard the personal

1 property in the immediate possession of the patient. The person taking him into
2 custody shall prepare a report generally describing the patient's personal property so
3 preserved and safeguarded and its disposition, except that if a responsible relative or
4 legal guardian is in possession of the patient's personal property, the report shall
5 include only the name of the responsible relative or legal guardian and the location of
6 the personal property, whereupon responsibility of the person taking him into custody
7 for such personal property shall terminate.

8 (b) As used in this section responsible relative means the spouse, parent, adult
9 child, or adult brother or sister of the patient.

10 (c) The department shall adopt rules and regulations consistent with this section
11 to safeguard and preserve personal property of the patient.

12 **§82205. Relation to Pending Criminal Actions.** Involuntary hospitalization by the
13 court of an individual found not guilty by reason of mental illness, disease or defect in
14 a criminal matter shall be pursuant to Titles 8 and 9 of the Guam Code Annotated.

15 **Article 3**

16 **Commitment for 28 Days**

17 **§82301. Authority to Detain for Additional 28 Days**

18 (a) If at the end of the 72-hour period in 82201(c), two qualified mental health
19 professionals determine that the individual is still gravely disabled and as a result
20 thereof serious physical harm to the individual or others is likely if the individual is
21 released, he shall remain at the facility pending the filing of a petition pursuant to
22 subsection (b) of this section.

1 (b) On the first working day after the 72-hour period in 82201(c), the Office of
2 the Attorney General shall file a petition for a 28-day commitment. The court may
3 order the proposed patient to be detained pending a hearing on the matter and shall
4 appoint legal counsel to represent the person being detained.

5 (c) A hearing shall be held within 72 hours of the filing of the petition for a 28-
6 day commitment, excluding Saturdays, Sundays and holidays. Additional time not to
7 exceed 10 days shall be granted at the request of the person being detained or his
8 attorney.

9 (d) If the court finds by clear and convincing evidence that the proposed patient
10 is a person who is gravely disabled and as a result thereof serious and immediate
11 physical harm to the proposed patient or others is likely, and after consideration of
12 reasonable alternative dispositions, including but not limited to, dismissal of petition,
13 voluntary outpatient care, voluntary admission to a treatment facility, appointment of a
14 guardian, or release before commitment as provided for in section 82302, it finds that
15 there is no suitable alternative to judicial commitment, the court shall commit the
16 patient to the least restrictive treatment program or alternative programs which can
17 meet the patient's treatment needs. In deciding on the least restrictive program, the
18 court shall consider a range of treatment alternatives including, but not limited to,
19 community-based nonresidential treatment, community residential treatment, partial
20 hospitalization, acute care hospital, and commitment to the Department. The court shall
21 also consider the proposed patient's treatment preferences and willingness to
22 participate voluntarily in the treatment ordered. The court may only commit a patient to
23 a facility or program that is willing and capable of meeting the patient's needs. The
24 court shall make a finding regarding the patient's capacity to understand his treatment

1 for the purpose of section 82801(g).

2 (e) The court shall find the facts specifically, and separately state its conclusions
3 of law. Where commitment is ordered, the findings of fact and conclusions of law shall
4 specifically state the proposed patient's conduct which is a basis for determining that
5 each of the requisites for commitment is met. If the proceedings are dismissed, the
6 court may direct that the person be transported back to a suitable location.

7 **§82302. Stay of Commitment.**

8 (a) After a hearing pursuant to 82301 or 82403, the court may stay the
9 execution of any commitment and release the proposed patient to the custody of an
10 individual or agency upon conditions that guarantee the care and treatment of the
11 patient.

12 (b) A continuance for dismissal, with or without findings, may be granted for up
13 to 90 days.

14 (c) When the court stays an order for commitment for more than 14 days beyond
15 the date of the initially scheduled hearing, the court shall issue an order that must
16 include:

17 (1) a written plan for services to which the proposed patient has agreed;

18 (2) a finding that the proposed treatment is available and accessible to the
19 patient and that public or private financial resources are available to pay
20 for the proposed treatment; and

21 (3) conditions that the patient must meet to avoid revocation of the stayed

1 commitment order and imposition of the commitment order.

2 (d) When a court releases a patient under this section, the court shall direct the
3 Department to report to the court at least once every 30 days, and the Department shall
4 immediately report a substantial failure of a patient or provider to comply with the
5 conditions of the release.

6 (e) The maximum duration of a stayed order under this section is six months.
7 The court may continue the order for a maximum of an additional 12 months if, after
8 notice and hearing, the court finds that:

9 (1) the person continues to be gravely disabled; and

10 (2) an order is needed to protect the patient or others from serious
11 physical harm.

12 (f) An order under this section may be modified upon agreement of the parties
13 and approval of the court.

14 (g) The court, on its own motion or upon the motion of any party stating that the
15 patient has not complied with a material condition of release, and after notice and a
16 hearing unless otherwise ordered by the court, may revoke any release and commit the
17 proposed patient under this chapter.

18 **§82303. Petition: Who Are To Receive Copies.**

19 (a) Filed copies of the petition for a 28-day commitment shall be personally
20 delivered to the proposed patient, and served on the proposed patient's attorney, the
21 Department of Mental Health and Substance Abuse, and on the facility providing
22 treatment.

1 (b) The patient shall be asked to designate any person whom he wishes to be
2 informed regarding the petition for a 28-day commitment or any extension thereof and
3 the Attorney General shall make reasonable efforts to deliver a copy of the petition or
4 any motion to extend the commitment to the person so designated. If the patient is
5 incapable of making such a designation at the time of certification, he shall be asked to
6 designate such a person as soon as he is capable.

7 **§82304. Maximum Period: When Termination of Commitment and Release of**
8 **Involuntary Patient Required.**

9 (a) The commitment under section 82301 shall be for no more than 28 days,
10 except as provided in Article 4 herein, and shall terminate as soon as, in the opinion of
11 the qualified mental health professional of the facility providing intensive treatment,
12 the patient no longer constitutes an imminent threat of substantial harm to himself or
13 others and has improved sufficiently for him or her to leave. The facility shall inform
14 the Office of the Attorney General of the date of the release of the patient, and the
15 Office of the Attorney General shall file a written notice of the release with the court
16 and shall serve a copy of the notice on the patient's attorney.

17 (b) Except as otherwise provided in the provisions of Article 4 or Article 6 of
18 this Chapter, a facility providing treatment must release any involuntary patient at the
19 end of 28 days who does not agree to receive further treatment on a voluntary basis.

20 (c) The court shall hold a status hearing within three judicial days prior to the
21 completion of the 28-day commitment, unless a notice has been filed prior thereto that
22 the patient has been released.

23 **§82305. Civil Liability for Knowingly and Willfully Detaining a Patient for More**

1 **than 28 Days.** Any individual who is knowingly and willfully responsible for
2 detaining a patient for more than 28 days in violation of the provisions of this Chapter
3 shall be liable to that patient for civil damages.

4 **§82306. Immunity from Liability; Duty to Communicate Threat.**

5 (a) Neither the qualified mental health professional nor the facility providing
6 intensive treatment, nor the peace officer responsible for the detention of the person,
7 shall be held civilly or criminally liable for any action by a patient released at or before
8 the end of 28 days pursuant to this Chapter.

9 (b) If during treatment and evaluation the patient has threatened the life or
10 safety of any other person, it shall be the duty of the qualified mental health
11 professional to make a good faith effort to communicate the substance of such threats
12 to the person so threatened prior to the release of the patient.

13 **§82307. Permitting Certified Patient to Leave Facility for Short Periods.**

14 Nothing in this Chapter shall prohibit a qualified mental health professional from
15 permitting a patient certified for intensive treatment to leave the facility for home visits
16 or for short periods for other therapeutic treatment during the patient's involuntary
17 intensive treatment. Such home visits or temporary leave shall not be deemed to be a
18 release of the patient under the provisions of Section 82306 of this Chapter.

19 **Article 4**

20 **Commitment for 90 Days**

21 **§82401. 90-day Extension of Commitment.**

22 (a) At the expiration of a 28-day commitment pursuant to 82301, a patient may

1 be confined pursuant to the provisions of this Article for an additional period, not to
2 exceed 90 days except as provided in section 82403(b), if he or she:

3 (1) has threatened, attempted, or inflicted physical harm upon himself or the
4 person of another after having been taken into custody for evaluation and
5 treatment, and, who, as a result of a grave disability, mental disorder,
6 developmental disability or chemical dependence, presents a threat of substantial
7 physical harm to himself or others;

8 (2) had attempted or inflicted physical harm upon the person of another or
9 himself, that act having resulted in his being taken into custody and who
10 represents, as a result of a grave disability, mental disorder, developmental
11 disability or chemical dependence, a threat of substantial harm to others or to
12 himself; or

13 (3) is unable to make reasoned choices as a result of a grave disability such that
14 the health or safety of the person or others is seriously endangered.

15 (b) For purposes of this Article, "Acustody" shall be construed to mean
16 involuntary detention under provisions of this Chapter, uninterrupted by any period of
17 unconditional release from a facility providing involuntary care and treatment.

18 (c) After consideration of reasonable alternative dispositions, including but not
19 limited to, a stay of commitment pursuant to section 82302, dismissal of petition,
20 voluntary outpatient care, voluntary admission to a treatment facility, or appointment
21 of a guardian, the court finds that there is no suitable alternative to judicial
22 commitment, the court shall commit the patient to the least restrictive treatment

1 program or alternative programs which can meet the patient's treatment needs. In
2 deciding on the least restrictive program, the court shall consider a range of treatment
3 alternatives including, but not limited to, community-based nonresidential treatment,
4 community residential treatment, partial hospitalization, acute care hospital, and
5 commitment to the Department. The court shall also consider the proposed patient's
6 treatment preferences and willingness to participate voluntarily in the treatment
7 ordered. The court may not commit a patient to a facility or program that is not capable
8 of meeting the patient's needs. The court shall make a finding as to the capacity of the
9 patient to understand his treatment for the purpose of section 82801(g).

10 (d) A hearing shall be scheduled within forty-five (45) days of the extension of
11 the commitment and again within three (3) judicial days prior to the termination of the
12 ninety (90) days, unless the patient has already been released with notice thereof to the
13 court, in order to review the continued need for a commitment, other treatment, or a
14 stay of further commitment. Written notice of the hearings shall be served upon the
15 Office of the Attorney General, the patient's attorney, and the facility providing
16 treatment.

17 **§82402. Procedure.**

18 (a) At any time during a 28-day commitment, the Office of the Attorney
19 General may move for an extension of the commitment for another 90 days,
20 accompanied by a sworn statement by a qualified mental health professional of the
21 facts by which the patient falls within section 82401.

22 (b) Copies of the motion for a 90-day extension of the commitment and the
23 supporting documents shall be served upon the patient named in the petition, his

1 attorney, and the facility providing treatment on the same day that they are filed with
2 the Clerk of the Superior Court.

3 (c) The court may order the patient to remain in the custody of the facility that is
4 providing treatment pending a hearing on the matter.

5 (d) The court shall conduct a hearing on the motion for a 90-day extension of the
6 commitment within four (4) judicial days of the filing of the motion. Additional time
7 not to exceed 10 days shall be granted at the request of the patient.

8 (e) Until a final order on the merits of the motion for a 90-day extension of the
9 commitment by the court, the patient named in the petition shall continue to be treated
10 in the intensive treatment facility until released by order of the Superior Court, unless
11 the motion for the extension is withdrawn. If no court order has been issued within five
12 (5) judicial days after the hearing in subsection (a), the patient shall be released.

13 **§82403. Findings; Additional Extension.**

14 (a) If the court finds that the patient named in the motion for a 90-day extension
15 of the commitment (1) has threatened, attempted or actually inflicted physical harm
16 upon himself or the person of another after having been taken into custody for
17 evaluation and treatment, and, as a result of a grave disability, mental disorder,
18 developmental disability or chemical dependence, presents an imminent threat of
19 substantial physical harm to himself or others; or (2) had attempted or inflicted
20 physical harm upon the person of another, that act having resulted in his being taken
21 into custody and who, as a result of a grave disability, mental disorder, developmental
22 disability or chemical dependence, presents an imminent threat of substantial physical
23 harm to himself or others; or (3) by reason of a grave disability is unable to make

1 reasoned choices such that the health of safety of the person or others is seriously
2 endangered, it shall remand him to the custody of the department for a period not to
3 exceed ninety (90) days from the date of the court's findings.

4 (b) The patient shall be released from involuntary treatment at the expiration of
5 ninety (90) days unless the Office of the Attorney General moves the court for a
6 second 90-day extension of the commitment on the grounds that he has threatened,
7 attempted, or inflicted physical harm on himself or on another person during his
8 commitment and he is a person, who, by reason of a grave disability, mental disorder,
9 developmental disability or chemical dependence, presents an imminent threat of
10 substantial harm to himself or others. Such motion for an additional 90-day extension
11 of commitment, accompanied by a sworn statement of the facts by which the patient
12 falls within the criteria of section 82401 shall be filed in the Superior Court and served
13 upon the patient's attorney and the facility that is providing treatment on the same day
14 that they are filed with the Clerk of the Superior Court.

15 (c) The procedures in section 82402 shall apply to a second 90-day extension of
16 the commitment and the court shall make a finding of the capacity of the patient to
17 understand his treatment for the purpose of section 82801(g).

18 (d) A hearing shall be scheduled within forty-five (45) days of the extension of
19 the commitment and again within three (3) judicial days prior to the termination of the
20 additional ninety (90) days, unless the patient has already been released with notice
21 thereof to the court, in order to review the continued need for a commitment, other
22 treatment, or a stay of further commitment. Written notice of the hearings shall be
23 served upon the Office of the Attorney General, the patient's attorney and the facility

1 providing treatment.

2 **§82404. Release Before Expiration of Ninety (90) Days; Notice to Court.**

3 (a) Nothing in this Chapter shall prohibit a qualified mental health professional
4 of the facility in which the patient is being involuntarily treated from releasing him
5 from treatment prior to the expiration of the commitment when in his opinion the
6 patient being involuntarily treated no longer constitutes an imminent threat of
7 substantial harm to himself or others.

8 (b) Whenever a qualified mental health professional releases a patient prior to
9 the expiration of an extended commitment, he shall provide written notice of the date
10 of the release to the Office of the Attorney General, who shall file such notice with the
11 court and serve a copy on the patient's attorney.

12 **§82405. Immunity of Facility From Liability for Actions of Patient Released.**

13 (a) The qualified mental health professional staff providing involuntary
14 treatment shall not be held civilly or criminally liable for any action by a patient who
15 has been released at or before the end of the commitment period.

16 (b) If during involuntary treatment the patient has threatened the life or safety of
17 any other person, it shall be the duty of the qualified mental health professional staff to
18 make a good faith effort to communicate the substance of such threats to the person so
19 threatened prior to the release of the patient, and no patient who has made such threats
20 may be released until after a court hearing approving such release.

21 **Article 5**

Conditional Outpatient Treatment

§ 82501. Application.

(a) Any interested person may apply to the Department to seek a court order for conditional outpatient treatment of a proposed patient. If the Department determines that conditional outpatient treatment may be appropriate, a pre-petition report may be prepared and forwarded to the Office of the Attorney General, who may file a petition for conditional outpatient treatment according to the criteria in section 82502(e).

(b) If the Attorney General files a petition for conditional outpatient treatment, the proposed patient shall be appointed an attorney. The proposed patient shall be examined by a qualified mental health professional, who shall prepare a written report with an assessment regarding the criteria for conditional outpatient treatment in section 82502(e).

(c) If a proposed patient fails to appear for the examination in subsection (b), the court may:

(1) reschedule the examination;

(2) accept an ex parte application from the Office of the Attorney General for an order that the proposed patient appear in court for a hearing regarding the examination; or

(3) deem the failure to appear as a waiver of the proposed patient's right to an examination and consider the failure to appear when deciding the merits of the petition for conditional outpatient treatment.

1 (d) Nothing in this chapter requires the Department to use procedures for
2 conditional outpatient treatment.

3 **§82502. Hearing Procedure.**

4 (a) The hearing on the petition for conditional outpatient treatment shall be held
5 within 14 days from the date of the filing of the petition. For good cause shown, the
6 court may extend the time of hearing up to an additional 30 days. When any proposed
7 patient has not had a hearing on a petition filed for conditional outpatient treatment
8 within the allowed time, the proceedings shall be dismissed.

9 (b) The proposed patient, the patient's counsel, the petitioner, and any other
10 persons as the court directs shall be given at least two days' notice of the time and date
11 of the hearing, except that any person may waive notice. Notice to the proposed patient
12 may be waived by patient's counsel.

13 (c) If a proposed patient fails to appear at the hearing, the court may reschedule
14 the hearing within five days and direct a peace officer, or other person to take the
15 proposed patient to the hearing.

16 (d) A court shall order conditional outpatient treatment when a proposed patient
17 meets the criteria under subsection (e). The treatment must be the least restrictive
18 treatment program available that can meet the patient's treatment needs.

19 (e) The court shall order conditional outpatient treatment if the court finds all of
20 the elements of the following factors by clear and convincing evidence:

- 21 (1) the proposed patient has a grave disability, mental disorder,
22 developmental disability or chemical dependence;

1 (2) the proposed patient refuses to accept appropriate mental health
2 treatment; and

3(3) the proposed patient's mental illness is manifested by instances of grossly disturbed
4 behavior or faulty perceptions and either:

5 (i) the grossly disturbed behavior or faulty perceptions significantly interfere with the
6 proposed patient's ability to care for himself and the proposed patient had previously
7 voluntarily agreed to substantially similar treatment under the same circumstances; or

8 (ii) due to the mental illness, the proposed patient received court-ordered inpatient
9 treatment under section 82301 or received voluntary treatment pursuant to section
10 82701 at least once in the previous three years; the patient is exhibiting symptoms or
11 behavior substantially similar to those that precipitated one or more of the previous
12 treatments; and the patient is reasonably expected to physically or mentally deteriorate
13 to the point of meeting the criteria for commitment under section 82301 unless treated.

14 (f) For purposes of subsection (e)(2), none of the following constitute a refusal
15 to accept appropriate mental health treatment:

16 (1) a willingness to take medication but a reasonable disagreement about
17 the type or dosage; or

18 (2) a good-faith effort to follow a reasonable alternative treatment plan.

19 (g) A hearing shall be scheduled within the first forty-five (45) days of the
20 court-ordered treatment and every ninety (90) days thereafter to determine the
21 continued need for conditional out-patient treatment.

22 **§82503. Treatment Alternatives.**

1 (a) If the court orders conditional outpatient treatment under section 82502(e),
2 the court may include in its order a variety of treatment alternatives including, but not
3 limited to, voluntary out-patient care, day treatment, medication compliance
4 monitoring, attendance at medical, psychological or psychiatric appointments,
5 community-based non-residential treatment, and short-term commitment at the
6 Department not to exceed 21 days. If the court orders short-term commitment and the
7 proposed patient will not go voluntarily, the court may direct a peace officer to take the
8 person into custody and transport the person to the Department.

9 (b) The court shall provide a written order for the conditional outpatient
10 treatment.

11 **§ 82504. Failure to Comply.**

12 (a) If the Department or a staff member of a program involved in the treatment,
13 supervision or care of an individual pursuant to a court order under section 82503 has
14 reason to believe that the individual has failed to comply with the requirements of said
15 treatment regimen, the Department or staff member shall immediately notify the
16 Attorney General, who shall thereupon request a court hearing to address the failure to
17 comply and shall notify the patient's attorney.

18 (b) Upon a court finding of a failure to comply with conditional outpatient
19 treatment, the court may impose an appropriate sanction, including the transfer to one
20 of the following under the criteria in section 82301(d):

- 21 (1) the adult inpatient unit of the Department;
22 (2) a supervised group living program;
23 (3) a sub-acute stabilization facility.

1
2 (c) The individual may not be transferred to a supervised group living program
3 or sub-acute stabilization facility unless in the opinion of the individual's attending
4 physician or a qualified mental health professional of the Department:

5 (1) it is not necessary for the individual to receive acute care inpatient
6 treatment;

7 and

8 (2) the individual is in need of either a supervised group living program
9 or a sub-acute stabilization facility.

10 (d) The individual may not be confined at the Department of Corrections as a
11 sanction for his failure to comply with conditional outpatient treatment.

12 Article 6

13 Voluntary Commitment

14 **§82601. Authority to Receive Voluntary Patients.** Any member of the qualified
15 mental health professional staff of a designated facility may admit for observation,
16 diagnosis, care and treatment, any person who is gravely disabled or who has
17 symptoms of being gravely disabled, and who, being eighteen (18) years of age or
18 over, applies therefor; or any individual under eighteen (18) years of age if his parents
19 or legal guardians apply therefor on his behalf.

20 **§82602. Discharge of Voluntary Patients.** Any qualified mental health professional
21 of a designated facility may authorize the release of a voluntarily admitted patient
22 whose hospitalization he determines to be no longer advisable.

1 **§82603. Right to Release on Application.**

2 (a) A voluntary patient who requests his release or whose release is requested, in
3 writing by his legal guardian, parents, spouse, or adult next of kin shall be released
4 forthwith, except that:

5 (1) If the patient was admitted on his own application and the request for
6 release is made by a person other than the patient, release may be conditioned
7 upon the agreement of the patient thereto; and

8 (2) If the patient, by reason of his age, was admitted on the application of
9 another person, his release prior to becoming eighteen (18) years of age may be
10 conditioned upon the consent of his parent or guardian; and

11 (3) A qualified mental health professional may detain the patient pursuant to
12 section 82201.

13 (b) Notwithstanding any other provision of this Chapter, judicial proceedings for
14 hospitalization shall not be commenced with respect to a voluntary patient unless
15 release of the patient has been requested by himself or the individual who applied for
16 his admission.

17 **Article 7**

18 **Writ of Habeas Corpus**

19 **§82701. Right to Hearing by Habeas Corpus; Request for Release; Duties of**
20 **Staff Member; Notices Required.**

1 (a) Every patient who is committed for a period other than the 72-hour hold
2 provided in section 82201, shall have a right to a hearing by writ of habeas corpus for
3 his release after he, his attorney, or his legal guardian has made a request to be
4 released to any member of the staff of a facility providing intensive treatment.

5 (b) Any member of the staff to whom a request for release is made shall
6 promptly provide the patient for his signature or mark, a copy of the form set forth
7 below. The member of the staff shall fill in his own name and the date, and, if the
8 patient signs by mark, shall fill in the patient's name, and shall then deliver the
9 completed copy to the qualified mental health professional person in charge, or his
10 designee, notifying him of the request. Unless the patient is released, the staff shall
11 file the request for release with the Clerk of the Superior Court, who shall serve copies
12 of the request upon the patient's attorney and the Office of the Attorney General. The
13 staff shall also permit the patient to telephone his attorney.

14 (c) The form for a request for release shall be substantially as follows:

15 **Request for Release**

16 (Name of the facility)

17 _____ day of _____, 20____.

18 I, _____ (member of the staff), have today received a request for
19 release from the undersigned patient, _____ (name):

20 _____

21 (Signature or mark of patient)

1 **§82702. Jurisdiction; Time For Granting Writ; When Immediate Release**
2 **Required.** Judicial review shall be by the Superior Court. The court shall grant a writ
3 of habeas corpus or order an evidentiary hearing within two (2) judicial days after the
4 petition is filed. If the court finds that the patient requesting release is not gravely
5 disabled or that the patient does not fall within the criteria for commitment, he shall be
6 released immediately.

7 **§82703. Finding Under ' 82802 Not Admissible As Evidence in Other**
8 **Proceeding.** A finding under Section 82702 of this Article shall not be admissible in
9 evidence in any civil or criminal proceedings.

10 **§82704. Immunity from Liability for Persons Exercising Authority in Detention**
11 **and Treatment Proceedings.** Individuals authorized to detain a person for a 72-hour
12 hold for treatment and evaluation pursuant to Article 2 of this Chapter, to certify a
13 patient for a 28-day commitment pursuant to Article 3 of this Chapter, or to file a
14 petition for a 90-day commitment pursuant to Article 4 of this Chapter shall not be
15 held either criminally or civilly liable for exercising such authority in accordance with
16 the law.

17 **Article 8**

18 **Rights of Patients**

19 **§82801. Enumeration of Rights; Posting of List in English, Chamorro, Tagalog**
20 **and Chuukese.**

21 The provisions of this Chapter shall be carried out with the utmost consideration for
22 the privacy and dignity of the patient who undergoes involuntary evaluation or
23 treatment. Each patient involuntarily detained for evaluation or treatment under the

1 provisions of this Chapter shall have the following rights, a list of which shall be
2 prominently posted in English, Chamorro, Tagalog and Chuukese in all facilities
3 providing such services and otherwise brought to his attention by such additional
4 means as the Attorney General may require:

5 (a) Every patient shall be entitled to humane care and treatment and, to the
6 extent that facilities, equipment, and personnel are available, to medical care and
7 treatment in accordance with the highest standards accepted in medical practice.

8 (b) To the fullest extent possible, all treatment proposed to be administered shall
9 be planned in consultation with the patient and he shall be kept informed as to the
10 nature, purpose and possible consequences of his treatment.

11 (c) The patient's attorney or legal guardian shall have the right at all times to
12 examine all medical and mental health records, plans for the treatment or other
13 pertinent records of the patient and, upon request and reimbursement to the treating
14 facility for reasonable costs of copying, to a photocopy of all or any part of such
15 records and plan.

16
17 (d) Within twenty-four (24) hours of the issuance of any order for commitment
18 for 28-day treatment and continuously thereafter, the patient's record at the treatment
19 facility shall contain detailed, written information stating the mental health treatment
20 being provided and the specific objectives of such treatment.

1 (e) Within five (5) days after the issuance of an order committing a patient to
2 ninety (90) day treatment, the qualified mental health professional staff in charge of the
3 patient's treatment shall prepare an individual treatment plan.

4
5 (f) Every patient, his attorney, or legal guardian has the right to refuse
6 electroconvulsive therapy, Insulin Shock, or Psycho Surgery.

7
8 (g) Absent a determination of incompetence, medication, including antipsychotic
9 drugs cannot be administered to involuntarily or voluntarily committed mental patients
10 in non-emergency situations without their informed consent.

11 **§82802. Right to Communication and Visitation; Exercise of Civil Rights.**

12 (a) Except to the extent that a qualified mental health professional determines
13 that it is necessary for the medical welfare of the patient to impose restrictions, every
14 patient shall be entitled:

15 (1) to communicate by sealed mail or otherwise with persons, including
16 official agencies, inside or outside the facility; and

17 (2) to receive visitors; and

18 (3) to exercise all civil rights available to the patient.

19 (b) Notwithstanding any limitations authorized under this Section on the right of
20 communication, every patient shall be entitled to communicate by sealed mail with his
21 attorney and with the court. Any letter or written message from a patient directed to the

1 court or the patient's attorney or legal guardian shall be promptly forwarded to the
2 addressee by the facility holding the patient.

3 (c) Upon admission to a facility where federal law prohibits unauthorized
4 disclosure of patient or resident identifying information to callers and visitors, the
5 patient or resident, or the legal guardian of the patient or resident, shall be given the
6 opportunity to authorize disclosure of the patient's or resident's presence in the facility
7 to callers and visitors who may seek to communicate with the patient or resident. To
8 the extent possible, the legal guardian of a patient or resident shall consider the
9 opinions of the patient or resident regarding disclosure of the patient=s or resident=s
10 presence in the facility.

11 (d) Any limitations imposed by a qualified mental health professional on the
12 exercise of these rights by the patient and the reasons for such limitation shall be made
13 a part of the clinical record of the patient.

14 **§82803. Who May Deny Rights to Patient; Grounds; Entry In Treatment**
15 **Records; Information To Be Made Available To Patient.** A patient's rights under
16 Section 82801 or Section 82802 of this Chapter may be denied for good cause only by
17 the director, qualified mental health professional in charge of the facility, or other
18 professional who admitted the patient. Denial of any of these rights of a patient shall in
19 all cases be entered into the patient's treatment record. Information pertaining to the
20 denial of rights contained in the patient's treatment record shall be made available to
21 the patient, his attorney, or his legal guardian.

22 **§82804. Rights Not Specifically Denied To Be Retained.** Every patient under the
23 provisions of this Chapter for evaluation or treatment in any facility shall be entitled to

all rights set forth in this Chapter and shall retain all rights unless specifically denied him under this Chapter.

§82805. Confidentiality of Information In Records; Persons To Whom Disclosure Authorized. For any proceedings instituted under this Chapter, the Office of the Attorney General shall have access to all medical and mental health records, plans for treatment and other pertinent records of the patient or proposed patient.

§82806. Compilation and Publication of Statistical Data Authorized. Nothing in this Chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards established by the Attorney General.

§82807. Action For Wrongful Release of Confidential Information or Records; Penalty or Treble Damages; Injunction.

(a) Any person may bring an action against an individual or agency who has willfully and knowingly released confidential information or records concerning him in violation of the provisions of this Chapter, for the greater of the following amounts, plus reasonable attorney's fees:

(1) Two Thousand Five Hundred Dollars (\$2,500); or

(2) Three times the amount of actual damages, if any, sustained by the plaintiff.

(b) It is not a prerequisite to an action under this section that the plaintiff suffer or be threatened with actual damages.

1 **§82808. Presumption of Incompetency Due to Evaluation or Treatment**
2 **Prohibited; Statement of Law to be Given Patient Leaving Facility.**

3 No person
4 may be presumed to be incompetent because he has been evaluated or treated for
5 mental illness, regardless of whether such evaluation or treatment was voluntarily or
6 involuntarily received. Any person who leaves a public or private mental health facility
7 following evaluation or treatment for mental illness, regardless of whether that
8 evaluation or treatment was voluntarily or involuntarily received shall be given a
9 statement of Guam law as stated in this section.

9 **§82809. Restraints.** Restraint and seclusion may only be used to ensure the safety of
10 the patient or others during an emergency safety situation. The Department shall
11 promulgate rules and regulations pursuant to the Administrative Adjudication Law to
12 carry out the intent of this section.

13 **§82810. Incarceration.** An inpatient shall not be placed in a facility under the
14 Department of Corrections, even if he commits a new crime, unless necessary to
15 protect the life of the patient or others.”