

Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
CENISAN MAGALAHI
AGANA, GUAM 96910 U.S.A.

4/14/88

APR 11 1988

The Honorable Franklin J.A. Quitugua
Speaker, Nineteenth Guam Legislature
Post Office Box CB-1
Agana, Guam 96910

Transmitted herewith is Substitute Bill No. 413, which I have signed into law as of this date.

The primary subject matter of this Bill is desperately needed by this Territory. As you are aware, the previous law which governed the involuntary hospitalization of mentally ill individuals was declared unconstitutional two years ago, because it allowed for near indefinite confinement without due process rights for patients being protected. Since that time, the Territory has had no means available to provide treatment to mentally ill individuals who are not inclined to seek such treatment on their own. In the case of dangerous or potentially dangerous people, this can have disastrous results, as we have seen in recent times.

This new measure provides a mechanism for involuntary hospitalization, while preserving the due process rights of those hospitalized.

Mr. Speaker, we must take action to protect mentally ill individuals who have the potential for extreme violence from themselves and those around them. It is inhumane to allow a condition to exist in which their very illness denies them the comfort and assistance that treatment can provide. I am pleased to sign this measure.

I am, however, concerned about the section which "grandfathers" certain optometrists who apparently have been unable to pass the certification requirements and tests as mandated by current law. I have concerns about the impact this may have upon the quality of care that patients on Guam may receive as a result.

Once again, I look forward to our continuing and cooperative efforts to promote the welfare of the people of Guam.

Sincerely,

JOSEPH F. ADA
Governor

NINETEENTH GUAM LEGISLATURE
1988 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

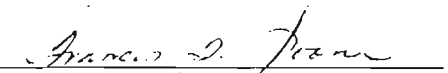
This is to certify that Substitute Bill No. 413 (COR), "AN ACT TO REPEAL AND REENACT 10 GCA CHAPTER 82 RELATING TO CIVIL COMMITMENT OF MENTALLY ILL PERSONS AND FOR OTHER PURPOSES," was on the 24th day of March, 1988, duly and regularly passed.


FRANKLIN A. QUITUGUA
Speaker

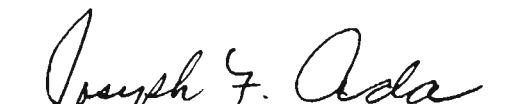
Attested:


PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 30th day of March, 1988,
at 2:40 o'clock P.m.


Francis D. Juan
Assistant Staff Officer
Governor's Office

APPROVED:


JOSEPH F. ADA
Governor of Guam

Date: April 11, 1988

Public Law No. 19-16

NINETEENTH GUAM LEGISLATURE
1988 (SECOND) Regular Session

Bill No. 413 (COR)
Substituted by Committee on
Health, Welfare & Ecology
February 9, 1988

Introduced by:

A. C. Lamorena III
E. M. Espaldon
M. C. Ruth

J. G. Bamba
E. R. Duenas
M. D. A. Manibusan
J. G. Miles
J. M. Rivera
J. T. San Agustin
E. P. Arriola
T. S. Nelson
F. R. Santos

AN ACT TO REPEAL AND REENACT 10 GCA
CHAPTER 82 RELATING TO CIVIL
COMMITMENT OF MENTALLY ILL PERSONS
AND FOR OTHER PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. 10 GCA Chapter 82 is hereby repealed and reenacted to
3 read:

4 "CHAPTER 82

5 Mentally Ill Persons

6 §82101. Definitions. As used in this Chapter, unless the context
7 requires otherwise:

8 (a) 'Department' means the Department of Mental Health and
9 Substance Abuse and 'Director' means the Director of the
10 Department of Mental Health and Substance Abuse.

11 (b) 'Facility' means a public or privately operated
12 institution which has been designated by the Director as being
13 adequately equipped for the care of persons suffering from mental
14 illness.

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(c) 'Gravely disabled' means a person who, as a result of mental disorder, is unable to use the elements of life which are essential to health or safety, including food, clothing or shelter, even though provided to the person by others.

(d) 'Investigator' or "Investigating Officer' means a person or organization appointed by a Judge of the Superior Court.

(e) 'Mentally ill' or 'Mentally disordered' means a person having a psychiatric or other disorder which substantially impairs the person's mental health, but does not include a person suffering from:

- (1) epilepsy; or
- (2) mental retardation; or
- (3) brief periods of intoxication caused by substances such as alcohol or drugs.

(f) 'Patient' means a person under evaluation, care or treatment in a facility pursuant to the provisions of this Title.

(g) 'Professional staff', 'professional person' or 'qualified mental health professional' means a licensed professional designated by the Director as specially qualified by training or experience in the diagnosis of mental or related illness. The following licensed professionals shall be so designated:

- (1) a psychiatrist;
- (2) a clinical psychologist;
- (3) a certified psychiatric nurse at the Master's level;
- or
- (4) a physician.

(h) 'Treatment' shall mean any therapy approved by the American Psychiatric Association or other recognized medical body; but shall not include those forms of treatment known as Electro-Convulsive Shock, Insulin Shock, Psycho-Surgery or any other measure which requires the physical invasion of the patient's body.

1 §82102. Privacy and dignity of a person to be considered. The
2 provisions of this Chapter shall be carried out with the utmost
3 consideration for the privacy and dignity of the person who undergoes
4 involuntary evaluation or treatment. For all purposes under this
5 Chapter, the determination of issues of fact before the court shall be
6 as follows:

- 7 (1) In all cases the burden of proof shall be upon the
8 agency or individual seeking commitment.
9 (2) The standard of proof shall be by clear and
10 convincing evidence.

11 Article 2. Involuntary Hospitalization

12 §82201. Authority to evaluate a person for involuntary
13 hospitalization.

14 (a) A qualified mental health professional shall perform an
15 examination of any person alleged to have a mental illness and
16 who as a result thereof is a danger to self, a danger to others or
17 gravely disabled.

18 (b) A qualified mental health professional shall form an
19 opinion as to whether the person does have a mental illness, and
20 as a result thereof is a danger to self, a danger to others or
21 gravely disabled. The findings of the examination shall be
22 reduced to writing and recorded on the '72-hour hold application'.
23 The application shall specify the circumstances under which the
24 person's condition was brought to the attention of the qualified
25 health professional his conclusion that there is probable cause
26 that the person is a danger to self, a danger to others or
27 gravely disabled as a result of a mental disorder.

28 (c) If a person is admitted to a treatment facility pursuant
29 to a qualified health professional's opinion that he or she is a
30 danger to self, a danger to others or gravely disabled as a result
31 of a mental disorder, he or she may detained for evaluation and
32 treatment for a period not to exceed 72 hours, Saturdays,
33 Sundays and holidays excluded.

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

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

12 (f) At the end of the 72-hour period, a person who has
13 been detained for evaluation shall:

- 14 (1) be referred for further care and treatment on a
15 voluntary basis; or
- 16 (2) be certified for intensive treatment on the 28-day
17 certification as provided in this Title; or
- 18 (3) released from inpatient care.

19 (g) Neither a qualified mental health professional who has
20 ordered the detention of a person under this Chapter; nor a
21 person on the staff at the facility shall be held liable under a
22 criminal or civil action for the detention of the person in
23 accordance with this Chapter for up to 72 hours, Saturdays,
24 Sundays and holidays excepted.

25 §82202. Authority for bringing an individual to a qualified mental
26 health professional for consideration of involuntary hospitalization.

27 (a) Any person may bring another to the Department or an
28 emergency room of a hospital for examination by a qualified mental
29 health professional. The person bringing the other for
30 examination must stay with the person until such examination is
31 completed.

1 (b) If a peace officer has probable cause to believe that a
2 person is a danger to self, a danger to others or gravely
3 disabled because of a mental illness he may bring the person to
4 the Department or the emergency room of a hospital for
5 examination. Only a peace officer may use reasonable force to
6 restrain and detain the person in need of evaluation. The peace
7 officer's written report on the reasons for detaining a person for
8 evaluation shall be included in the 72-hour application.

9 (c) If the qualified health professional conducting the
10 examination does not find the person to be a danger to self, a
11 danger to others or gravely disabled because of a mental illness
12 he must notify the peace officer if he is still present, or the
13 police department, if the peace officer has certified in writing
14 that the person may be charged with a crime as specified in the
15 written report of the peace officer.

16 (d) When a peace officer brings an individual for an
17 examination he shall remain available until the examination is
18 completed and it is determined that the person is accepted for
19 involuntary hospitalization. The peace officer shall provide for
20 the safety of others during the examination, if necessary.

21 §82203. Preservation and safeguarding of personal property of
22 person taken into custody.

23 (a) At the time a patient is taken into custody for
24 evaluation, or within a reasonable time thereafter, unless a
25 responsible relative or the guardian or conservator of the person
26 is in possession of the patient's personal property, the person
27 taking him into custody shall take reasonable precautions to
28 preserve and safeguard the personal property in the immediate
29 possession of the person. The person taking him into custody
30 shall then furnish to the court a report generally describing the
31 patient's personal property so preserved and safeguarded and its
32 disposition, except that if a responsible relative or guardian or
33 conservator is in possession of the patient's personal property,
34 the report shall include only the name of the responsible relative

1 or guardian or conservator and the location of the personal
2 property, whereupon responsibility of the person taking him into
3 custody for such personal property shall terminate.

4 (b) As used in this section 'responsible relative' means the
5 spouse, parent, adult child, or adult brother or sister of the
6 person, except that it does not include the person who applied
7 for the examination under this Chapter.

8 §82204. Relation to Pending Criminal Actions. Involuntary
9 hospitalization by the Court of an individual found not guilty by
10 reason of insanity shall be pursuant to Titles 8 and 9 of the GCA.

11 Article 3. Certification for Intensive Treatment

12 §82301. Authority to Detain for Additional 28-days.

13 (a) If at the end of the 72-hour evaluation period, the
14 individual is still a danger to self, a danger to others or is
15 gravely disabled because of a mental illness, he shall remain in
16 treatment and evaluation at the facility upon the written
17 certification of two qualified mental health professionals that he is
18 still in need of treatment. This certification shall be known as
19 the '28-day certificate for intensive treatment'.

20 (b) The Court shall be notified of the certificate on the
21 first working day following its issuance. The Court shall appoint
22 legal counsel to represent the person being detained.

23 (c) A hearing shall be held within 72 hours. One of the
24 qualified mental health professionals who performed the evaluation
25 shall be required to be present for the hearing.

26 (d) Involuntary intensive treatment shall continue under the
27 following conditions

28 (1) The patient has been advised that he needs
29 voluntary treatment, but has not accepted it, and

30 (2) A facility providing intensive is equipped and
31 staffed to provide appropriate treatment and
32 agrees to admit the person, and

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(3) An individual who is gravely disabled as a result of a mental illness may be certified for intensive treatment only after a finding by the Court that alternative, non-institutional care, capable of providing appropriate care and support, is not available on an out-patient basis and after a finding by the Court that the facility has the capability to provide intensive treatment for the individual.

§82302. Certification. Certification shall be required for any involuntary 28-day intensive treatment.

§82303. Same; who are to receive copies.

(a) Copies of the certification notice, after having been filed with the Court shall be personally delivered to the patient so certified. A copy shall also be sent to the patient's attorney, to the Attorney General, and to the facility providing intensive treatment.

(b) The patient shall be asked to designate any person whom he wishes informed regarding his certification and a copy of the certification notice shall be delivered to the person so designated. If the patient is incapable of making such a designation at the time of certification, he shall be asked to designate such a person as soon as he is capable.

§82304. Maximum period; when termination of certification and release of involuntary patient required.

(a) Certification shall be for no more than 28 days, and shall terminate as soon as, in the opinion of the qualified mental health professional staff of the facility providing intensive treatment, the patient has improved sufficiently for him to leave, or is prepared to accept voluntary treatment on referral or to remain in the facility providing intensive treatment on a voluntary basis.

1 (b) Except as otherwise provided in the provisions of
2 Article 5 or Article 7 of this Chapter, a facility providing
3 intensive treatment must release all involuntary patients at the
4 end of 28 days who do not agree to receive further treatment on
5 a voluntary basis.

6 §82305. Civil liability for knowingly and willfully detaining a
7 patient for more than 28 days.

8 (a) Any individual who is knowingly and willfully
9 responsible for detaining a patient for more than 28 days in
10 violation of the provisions of this Chapter shall be liable to that
11 patient for civil damages.

12 §82306. Immunity from liability of qualified mental health
13 professional staff for action by person released within the designated
14 period.

15 (a) Neither the qualified mental health professional staff of
16 the facility providing intensive treatment, nor the peace officer
17 responsible for the detainment of the person, shall be held civilly
18 or criminally liable for any action by a person released at or
19 before the end of 28 days pursuant to this Chapter.

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

25 §82307. Permitting certified person to leave facility for short
26 periods. Nothing in this Chapter shall prohibit the qualified mental
27 health professional staff from permitting a person certified for
28 intensive treatment to leave the facility for home visits or for short
29 periods for other therapeutic treatment during the person's involuntary
30 intensive treatment. Such home visits or temporary leave shall not be
31 deemed to be a release of the person under the provisions of §82306 of
32 this Chapter.

1 Article 4. Judicial Review

2 §82401. Right to hearing by habeas corpus; request for release;
3 duties of staff member; notices required.

4 (a) Every person detained by certification for intensive
5 treatment or temporary conservatorship shall have a right to a
6 hearing by writ of habeas corpus for his release after he or his
7 attorney has made a request to leave to any member of the staff
8 of a facility providing intensive treatment.

9 (b) Any member of the staff to whom a request for release
10 is made shall promptly provide the patient for his signature or
11 mark, a copy of the form set forth below. The member of the
12 staff shall fill in his own name and the date, and, if the patient
13 signs by mark, shall fill in the patient's name, and shall then
14 deliver the completed copy to the qualified mental health
15 professional person in charge, or his designee, notifying him of
16 the request. No later than the next working day, the person
17 notified shall inform the Superior Court and the Attorney
18 General. The staff shall also permit the patient to telephone his
19 attorney.

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

22 Request for Release

23 (Name of the facility) _____ day of _____, 19____.

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

26 _____
27 (Signature or mark of patient)

28 §82402. Jurisdiction; time for granting writ; when immediate
29 release required.

30 Judicial review shall be by the Superior Court. The court shall
31 grant a writ of habeas corpus or order an evidentiary hearing within
32 two (2) judicial days after the petition is filed. If the court finds

1 that the person requesting release is not, as a result of a mental
2 illness, a danger to others, or to himself, or gravely disabled, the
3 person shall be released immediately; provided, that the court shall
4 not release a gravely disabled individual unless all of the conditions
5 set forth in Section 82301(d) of this Chapter relating to
6 non-institutional care are satisfied.

7 §82403. Finding under §82402 not admissible as evidence in other
8 proceeding.

9 A finding under Section 82402 of this Chapter shall not be
10 admissible in evidence in any civil or criminal proceedings.

11 §82404. Immunity from liability for persons exercising authority
12 in detention and treatment proceedings.

13 Individuals authorized under this Chapter to detain a person for
14 72-hour treatment and evaluation pursuant to Article 1 of this
15 Chapter, to certify a person for intensive treatment pursuant to
16 Article 2 of this Chapter, or to file a petition for postcertification
17 treatment for a person pursuant to Article 5 of this Chapter shall not
18 be held either criminally or civilly liable for exercising such authority
19 in accordance with the law.

20 Article 5. Postcertification Procedures for
21 Imminently Dangerous Persons.

22 §82501. Postcertification procedures for dangerous persons;
23 maximum additional period.

24 At the expiration of the 28-day period of intensive treatment, a
25 person may be confined for further treatment pursuant to the
26 provisions of this Article for an additional period, not to exceed 90
27 days, if he:

- 28 (a) Has threatened, attempted, or inflicted physical harm
29 upon himself or the person of another after having been taken
30 into custody for evaluation and treatment, and who, as a result
31 of a mental illness, presents an imminent threat of substantial
32 physical harm to himself or others; or

1 (b) Had attempted or inflicted physical harm upon the
2 person of another, that act having resulted in his being taken
3 into custody and who presents, as a result of a mental illness, an
4 imminent threat of substantial harm to others. For purposes of
5 this Chapter, 'custody' shall be construed to mean involuntary
6 detainment under the provisions of this Chapter uninterrupted by
7 any period of unconditioned release from a facility providing
8 involuntary care and treatment.

9 §82502. Petition by person in charge of facility.

10 (a) At any time during the 28-day intensive treatment
11 period, the qualified medical professional in charge of the facility
12 may petition the Superior Court for an order requiring the
13 patient to undergo an additional period of treatment on the
14 grounds set forth in Section 82501 of this Chapter. The petition
15 shall summarize the facts which support the contention that the
16 person falls within the standards set forth in Section 82501 of
17 this Chapter.

18 (b) Copies of the petition for postcertification treatment and
19 the affidavits in support thereof shall be served upon the person
20 named in the petition and his attorney on the same day as they
21 are filed with the Clerk of the Superior Court.

22 §82503. Proceedings on the petition for postcertification
23 treatment.

24 (a) The court shall conduct the proceedings on the petition
25 for post certification treatment within four (4) judicial days of the
26 filing of the petition and in accordance with constitutional
27 guarantees of due process of law.

28 (b) If at the time of the hearing the person named in the
29 petition requests a jury trial, such trial shall commence within ten
30 (10) judicial days of the filing of the petition for postcertification
31 treatment unless the person's attorney requests a continuance,
32 which may be for a maximum of ten (10) additional judicial days.
33 The decision of the jury must be unanimous in order to support
34 the finding of facts required by Section 82504 of this Chapter.

1 (c) Until a final decision on the merits by the court the
2 person named in the petition shall continue to be treated in the
3 intensive treatment facility until released by order of the Superior
4 Court or unless the petition for post certification treatment is
5 withdrawn. If no decision has been made within thirty (30) days
6 after the filing of the petition, not including extensions of time
7 requested by the person's attorney, the person shall be released.
8 §82504. Findings; maximum period of additional treatment; filing
9 of new petition.

10 If the court finds that the person named in the petition for
11 postcertification treatment has (a) threatened, attempted or actually
12 inflicted physical harm upon himself or the person of another after
13 having been taken into custody for evaluation and treatment, and, as
14 a result of a mental illness, presents an imminent threat of substantial
15 physical harm to himself or others; or (b) had attempted or inflicted
16 physical harm upon the person of another, that act having resulted in
17 his being taken into custody and who, as a result of a mental illness,
18 presents imminent threat of substantial physical harm to others, it
19 shall remand him to the custody of the department or other facility for
20 a period not to exceed ninety (90) days from the date of court
21 judgment. Said person shall be released from involuntary treatment at
22 the expiration of ninety (90) days unless the qualified mental health
23 professional staff of the facility in which he is confined files a new
24 petition for postcertification treatment on the grounds that he has
25 threatened, attempted, or inflicted physical harm on himself or on
26 another person during his period of postcertification treatment and he
27 is a person, who, by reason of a mental illness, presents an imminent
28 threat of substantial harm to others. Such new petition for
29 postcertification treatment shall be filed in the Superior Court.

30 §82505. Release before expiration of ninety (90) days; Notice to
31 court.

32 (a) Nothing in this Chapter shall prohibit the director or
33 qualified mental health professional person in charge of the

1 facility in which the person is being involuntarily treated from
2 releasing him from treatment prior to the expiration of ninety (90)
3 days when in his opinion the person being involuntarily treated
4 no longer constitutes an imminent threat of substantial harm to
5 himself or others.

6 (b) Whenever the director or qualified mental health
7 professional person in charge of a facility providing
8 postcertification treatment pursuant to this Chapter releases a
9 person prior to the expiration of ninety (90) days, he shall so
10 notify the court.

11 §82506. Immunity of hospital from liability for actions of person
12 released.

13 (a) The qualified mental health professional staff providing
14 ninety (90) days involuntary treatment shall not be held civilly or
15 criminally liable for any action by a person released at or before
16 the end of the ninety (90) day period.

17 (b) If during the ninety (90) days of involuntary treatment
18 the patient has threatened the life or safety of any other person,
19 it shall be the duty of the qualified mental health professional
20 staff to make a good faith effort to communicate the substance of
21 such threats to the person so threatened prior to the release of
22 the patient, and no person who has made such threats may be
23 released until after a court hearing approving such release.

24 Article 6. Legal and Civil Rights of Persons

25 §82601. Enumeration of rights; posting of list in English,
26 Chamorro and Tagalog.

27 Each person involuntarily detained for evaluation or treatment
28 under the provisions of this Chapter shall have the following rights, a
29 list of which shall be prominently posted in English, Chamorro and
30 Tagalog in all facilities providing such services and otherwise brought
31 to his attention by such additional means as the Attorney General may
32 require.

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

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

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

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

21 (e) Within five (5) days after the entry of an order
22 committing a person to ninety (90) day treatment, the qualified
23 mental health professional staff in charge of the patient's
24 treatment shall prepare an individual treatment plan.

25 (f) Every patient, or his attorney, has the right to refuse
26 electroconvulsive therapy, Insulin Shock, Psycho Surgery, or any
27 other measure which requires the physical invasion of the
28 patient's body.

29 §82602. Right to Communication and Visitation; Exercise of Civil
30 Rights.

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

- 1 (1) To communicate by sealed mail or otherwise with
2 persons, including official agencies, inside or outside
3 the facility; and
4 (2) To receive visitors; and
5 (3) To exercise all civil rights, including the right to
6 dispose of property, execute instruments, make
7 purchases, enter contractual relationships, and vote,
8 unless he has been adjudicated incompetent and has not
9 been restored to legal capacity.

10 (b) Notwithstanding any limitations authorized under this
11 Section on the right of communication, every patient shall be
12 entitled to communicate by sealed mail with his attorney and with
13 the Court. Any letter or written message from a patient directed
14 to the court or the patient's attorney shall be promptly forwarded
15 to the addressee by the facility holding the patient.

16 (c) Any limitations imposed by a qualified mental health
17 professional on the exercise of these rights by the patient and
18 the reasons for such limitation shall be made a part of the clinical
19 record of the patient.

20 §82603. Who may deny rights to person detained; grounds; entry
21 in treatment records; information to be made available to person
22 detained.

23 A person's rights under §82601 or §82602 of this Chapter may be
24 denied for good cause only by the director or qualified mental health
25 professional in charge of the facility. Denial of an involuntarily
26 detained person's rights shall in all cases be entered into the person's
27 treatment record. Information pertaining to the denial of rights
28 contained in the person's treatment record shall be made available to
29 the person, his attorney, or his conservator or guardian.

30 §82604. Rights not specifically denied to be retained.

31 Every person involuntarily detained under the provisions of this
32 Chapter for evaluation or treatment in any facility, including a
33 conservatee placed in any facility, shall be entitled to all rights set

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

3 §82605. Confidentiality of information in records; persons to
4 whom disclosure authorized.

5 All information and records obtained in the course of providing
6 service to either voluntary or involuntary recipients of services shall
7 be confidential. Information and records may be disclosed only:

8 (a) In communications between qualified mental health
9 professionals in the provision of services or appropriate referrals,
10 or in the course of conservatorship proceedings;

11 (b) When the qualified mental health professional staff in
12 charge of the patient, with the approval of the patient or his
13 attorney, conservator or guardian, designates persons to whom
14 information or records may be released, except that nothing in
15 this Chapter shall be construed to compel a physician,
16 psychologist, social worker, nurse, attorney, or other
17 professional person to reveal information which has been given to
18 him in confidence by members of the patient's family. No record
19 may be released under this subsection after ten (10) years have
20 elapsed since the record was made;

21 (c) To the extent necessary to make claims on behalf of a
22 recipient for services for aid, insurance, or medical assistance to
23 which he may be entitled;

24 (d) If the recipient of services is a ward or conservatee,
25 and his guardian or conservator designates, in writing, persons
26 to whom records or information may be disclosed, except that
27 nothing in this Chapter shall be construed to compel a qualified
28 mental health professional, psychologist, social worker, nurse or
29 attorney, to reveal information which has been given him in
30 confidence by members of a patient's family.

31 (e) For research, provided that the Attorney General
32 provides by regulation, rules for the conduct of research. Such
33 rules shall include, but need not be limited to, the requirement

1 that all researchers must sign an oath of confidentiality as
2 follows:

3 Date: _____

4 As a condition of doing research concerning persons who
5 have received services from _____ (fill in the
6 facility, agency or person) I _____ agree not
7 to divulge any information obtained in the course of such
8 research to unauthorized persons, and not to publish or otherwise
9 make public any information regarding persons who have received
10 services such that the person who received services is
11 identifiable.

12 I realize that the unauthorized release of confidential
13 information may make me subject to a civil action under the
14 provisions of Title VI of the Code of Civil Procedure.

15 Signed: _____

16 (f) To the courts, as necessary to the administration of
17 justice.

18 §82606. Compilation and publication of statistical data authorized.

19 Nothing in this Chapter shall be construed to prohibit the
20 compilation and publication of statistical data for use by government or
21 researchers under standards established by the Attorney General.

22 §82607. Action for wrongful release of confidential information or
23 records; penalty or treble damages; injunction.

24 (a) Any person may bring an action against an individual
25 or agency who has willfully and knowingly released confidential
26 information or records concerning him in violation of the
27 provisions of this Chapter, for the greater of the following
28 amounts:

- 29 (1) Two Thousand Five Hundred Dollars (\$2,500); or
30 (2) Three times the amount of actual damages, if any,
31 sustained by the plaintiff.

1 (b) It is not a prerequisite to an action under this section
2 that the plaintiff suffer or be threatened with actual damages.
3 §82608. Presumption of incompetency due to evaluation or
4 treatment prohibited; statement of law to be given person leaving
5 facility.

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

14 §82609. Mechanical Restraints.

15 Mechanical restraints shall not be applied to a patient unless it is
16 determined by the treating qualified mental health professional person
17 to be required by the medical needs of the patient, and the use
18 thereof is approved by the court, or, in the case of an emergency,
19 within 72 hours after restraints are first used. Every use of
20 mechanical restraints and the reasons therefor shall be made part of
21 the clinical record of the patient.

22 Article 7. Conservatorship for Gravely Disabled Persons

23 §82701. For whom conservator may be appointed; Procedure;
24 Exceptions.

25 A conservator of the person, or the estate, or of the person and
26 the estate may be appointed for any person who is gravely disabled as
27 the result of a mental disorder. The procedure for establishing
28 conservatorship under this Chapter shall be the same as that provided
29 in 15 GCA Division 4 except as follows:

30 (a) A conservator may be appointed for a gravely disabled
31 minor.

32 (b) When a gravely disabled person already has a guardian
33 or conservator, the Superior Court under this Chapter may retain

1 that guardian or conservator, or remove him and appoint a new
2 guardian or conservator under the provisions of this Chapter.

3 (c) The person for whom conservatorship is sought shall
4 have the right to demand a jury trial on the issue of whether he
5 is gravely disabled. This right shall also apply in subsequent
6 proceedings to reestablish conservatorship.

7 (d) The Superior Court may grant a conservator, appointed
8 under this Chapter, with the power to place his conservatee in a
9 facility for psychiatric or psychological care only after finding
10 that alternative, non-institutional care and support are not
11 available on an out-patient basis, and after finding that the
12 facility has the capability to provide treatment which is
13 appropriate to the needs of the gravely disabled individual.

14 §82702. Who may recommend conservatorship; Petition by
15 investigating officer; pleading and filing requirements for temporary
16 conservatorship.

17 When the qualified mental health professional person in charge of
18 a facility providing evaluation or intensive treatment determines that a
19 person in his care is gravely disabled as a result of a mental disorder
20 and is unwilling to accept, or incapable of accepting, treatment
21 voluntarily, he may recommend conservatorship to the officer providing
22 conservatorship investigation. Such recommendation shall be made in a
23 written report supplying pertinent information to include diagnosis,
24 symptoms, prognosis, treatment and reasons for the grave disability.
25 If the officer providing conservatorship investigation concurs with the
26 recommendation, he shall petition the Superior Court to establish
27 conservatorship. Where temporary conservatorship is indicated, the
28 fact shall be alternatively pleaded in the petition.

29 §82703. Temporary conservatorship.

30 (a) A temporary conservator under this Chapter shall
31 determine that arrangements are necessary to provide the person
32 with food, shelter, and care pending the determination of
33 conservatorship. He shall give preference to arrangements which
34 allow the person to return to his home, family or friends. If

1 necessary, the temporary conservator may require the person to
2 be detained in a facility providing intensive treatment pending the
3 determination of the petition for conservatorship. Any person so
4 detained shall have the same right to judicial review set forth in
5 Article 4 of this Chapter.

6 (b) Temporary conservatorship shall continue pending a
7 hearing to consider the appointment of a conservator, the trial
8 and any appeals, but in no event longer than one (1) year. The
9 powers of the temporary conservator shall be those granted in the
10 decree, but in no event may they be broader than the power
11 which may be granted a conservator.

12 §82703. Duties of investigating officer.

13 The officer providing conservatorship investigation shall
14 investigate all available alternatives to conservatorship and shall
15 recommend conservatorship to the court only if no suitable alternatives
16 are available. The report to the court shall be comprehensive and
17 shall contain all relevant aspects of the person's medical,
18 psychological, financial, family, vocational and social condition, and
19 shall contain all available information concerning the person's real and
20 personal property. The facility providing intensive treatment or
21 evaluation shall disclose any records or information which may facilitate
22 the investigation. If the officer providing conservatorship
23 investigation recommends against conservatorship, he shall set forth all
24 alternatives available. A copy of the report shall be transmitted to
25 the individual who was originally recommended to serve as conservator,
26 and to the person recommended for conservatorship.

27 §82704. Notice by nominee of willingness to accept
28 conservatorship.

29 The person recommended to serve as conservator shall promptly
30 notify the officer providing conservatorship investigation whether he
31 will accept the position if appointed. If notified that the person or
32 agency recommended will not accept the position if appointed, the
33 officer providing conservatorship investigation shall promptly
34 recommend another person to serve as conservator.

1 §82705. Recommendation of person or agency to serve as
2 conservator.

3 If the conservatorship investigation results in a recommendation
4 for conservatorship, the recommendation shall designate the most
5 suitable person or agency to serve as a conservator. No person, or
6 agency, shall be designated as conservator whose interest, activities,
7 obligations or responsibilities are such as to compromise his or their
8 ability to represent and safeguard the interests of the conservatee.

9 §82706. Report by investigating officer.

10 The report of the officer providing conservatorship investigation
11 shall contain his recommendations concerning the powers to be granted
12 to, and the duties to be imposed upon the conservator, and the legal
13 disabilities to be imposed upon the conservatee. The report of the
14 court shall also contain an agreement signed by the person or agency
15 recommended to serve as conservator certifying that the person or
16 agency is able and willing to serve as conservator.

17 §82707. Powers of conservator.

18 All conservators shall have such powers as the Court may
19 designate. The report shall also recommend for or against the
20 imposition of each of the following disabilities on the proposed
21 conservatee:

22 (a) The right to possess and carry firearms.

23 (b) The privilege of possessing a license to operate a motor
24 vehicle. If the report recommends against this privilege and the
25 Court adopts the recommendation, the agency providing
26 conservatorship investigation shall, upon the appointment of the
27 conservator, so notify the Department of Revenue and Taxation
28 Licensing Section.

29 (c) The right to enter into contracts. The investigating
30 officer may recommend against the person having the right to
31 enter specified types of transactions in excess of specified money
32 amounts.

1 (d) The right to use alcohol or other non-prescribed
2 substances causing addiction.

3 (e) If the person has shown to be a danger to self or to
4 others because of a mental disorder, and if it is required by the
5 Court, the person must take prescribed medication as part of his
6 treatment. This shall be monitored by the conservator and may
7 consist of oral medications or medications by injection.

8 (f) If the Court adopts the recommendation, the conservator
9 shall be responsible to ensure the person's basic living
10 requirements are paid before providing the person with funds for
11 personal use each month.

12 §82708. Right to place conservatee in medical or other facility,
13 notice to investigating officer.

14 A conservator appointed pursuant to this Chapter shall have the
15 right, if specified in the court order, to place his conservatee in a
16 medical psychiatric, nursing, or other facility, or a hospital, a United
17 States government hospital, or other non-medical facility approved by
18 the Department. If the conservatee is not to be placed in his own
19 home or the home of a relative, first priority shall be to placement in
20 a suitable facility as close as possible to his home or the home of a
21 relative. Before doing so, the conservator shall inform the officer
22 providing conservatorship investigation and shall, if requested by the
23 officer, submit his conservatee to an evaluation pursuant to this Title
24 to determine whether such action is necessary.

25 §82709. Alternative placement after notice by person in charge of
26 facility.

27 (a) A conservator appointed under this Chapter shall find
28 alternative placement for his conservatee within seven (7) days
29 after he is notified by the qualified mental health professional in
30 charge of the facility serving the conservatee that the
31 conservatee no longer needs the care or treatment offered by that
32 facility.

1 (b) If the alternative placement cannot be found at the end
2 of the 7-day period the conservator shall confer with the qualified
3 mental health professional in charge of the facility and they shall
4 then determine the earliest practicable date when such alternative
5 placement may be obtained.

6 §82710. Powers and duties of conservators and legal disabilities
7 of conservatees.

8 The Attorney General shall designate by regulation, standards to
9 be followed by the officer providing conservatorship investigation in
10 recommending for or against specific powers and duties of conservators
11 and legal disabilities of conservatees under this Chapter.

12 §82711. Termination of conservatorship.

13 Conservatorship initiated pursuant to this Chapter shall
14 automatically terminate one (1) year after the appointment of the
15 conservator by the Superior Court. The period of service of a
16 temporary conservator shall not be included in the one-year period.
17 If upon the termination of an initial or a succeeding period of
18 conservatorship the conservator determines that conservatorship is still
19 required, he may petition the Superior Court for his reappointment as
20 conservator for a succeeding one-year period.

21 §82712. Same; Notice to conservator and conservatee.

22 The Clerk of the Superior Court shall notify each conservator,
23 his conservatee and the qualified mental health professional in charge
24 of the facility in which the person resides, and the conservatee's
25 attorney, one (1) month before the termination of the one-year period.
26 Notification shall be by certified mail. If the conservator does not
27 petition to reestablish conservatorship before the termination of the
28 one-year period, the Court shall issue a decree terminating
29 conservatorship. The decree shall be sent to the conservator and his
30 conservatee by certified mail.

31 §82713. Ratification of good-faith acts of conservator beyond
32 maximum period; Decree.

33 In the event the conservator continues in good faith to act within
34 the powers granted him in the original decree of conservatorship

1 beyond the one-year period, he may petition for and shall be granted
2 a decree ratifying his acts as conservator beyond the one-year period.
3 The decree shall provide for a retroactive appointment of the
4 conservator to provide continuity of authority in those cases where the
5 conservator did not apply in time for reappointment.

6 §82714. Petition by conservatee for rehearing.

7 At any time, but not to exceed more than once each three (3)
8 months, the conservatee may petition the Superior Court for a
9 rehearing as to his status as a conservatee.

10 §82715. Time for hearing petitions, attorney for conservatee.

11 All petitions under this Chapter shall be heard within thirty (30)
12 days and an attorney shall be provided for the conservatee or
13 proposed conservatee.

14 §82716. Chapter provisions to supersede commitments under
15 former provisions.

16 Conservatorship established under this Chapter shall supersede
17 any commitment under other provisions of Guam law relating to the
18 mentally ill.

19 §82717. Former conservatee not to be presumed incompetent.

20 A person who is no longer a conservatee shall not be presumed to
21 be incompetent by virtue of his having been a conservatee under the
22 provisions of this Chapter.

23 Article 8. Voluntary Hospitalization

24 §82801. Authority to Receive Voluntary Patients.

25 Any member of the qualified mental health professional staff of a
26 designated facility may admit for observation, diagnosis, care and
27 treatment, any person who is mentally ill or has symptoms of a mental
28 illness and who, being eighteen (18) years of age or over, applies
29 therefor; or any individual under eighteen (18) years of age who is
30 mentally ill or has symptoms of mental illness, if his parents or legal
31 guardians apply therefor in his behalf.

1 §82802. Discharge of Voluntary Patients.

2 Any qualified mental health professional member staff of a
3 designated facility may authorize the release of a voluntarily admitted
4 person whose hospitalization he determines to be no longer advisable.

5 §82803. Right to Release on Application.

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

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

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

18 (3) If the qualified mental health professional of the
19 designated facility within forty-eight (48) working
20 hours from the receipt of the request, files with the
21 Superior Court or a judge thereof, a 72-hour hold
22 certificate, that in his opinion the release of the patient
23 would be unsafe for the patient or others, release may
24 be postponed, pursuant to this Chapter.

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

30 Section 2. 10 GCA Section 12509 is amended to read:

31 "Section 12509. License Fees; Licensure under Prior Laws. Any
32 person practicing as an optometrist on Guam prior to December 31,
33 1986 shall be held to be licensed under the provisions of this Chapter
34 and shall be entitled to the annual renewal of his license."

NINETEENTH GUAM LEGISLATURE

ROLL CALL SHEET

Bill No. 413

DATE: 3-24-88

Res. No. _____

QUESTION: _____

SENATOR		<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
<u>E. P. Arriola</u>		✓			
<u>J. G. Bamba</u>		✓			
<u>M. Z. Bordallo</u>		✓			
<u>H. D. Dierking</u>		✓			
<u>E. R. Duenas</u>		✓			
<u>E. M. Espaldon</u>		✓			
<u>F. J. Gutierrez</u>	+	✓			
<u>M. K. Hartsock</u>		✓			
<u>A. C. Lamorena III</u>		✓			
<u>P. C. Lujan</u>					✓
<u>M. D. A. Manibusan</u>	+	✓			
<u>J. G. Miles</u>		✓			
<u>T. S. Nelson</u>	+	✓			
<u>D. Parkinson</u>		✓			
<u>J. F. Quan</u>					✓
<u>F. J. Quitugua</u>		✓			
<u>J. M. Rivera</u>			✓		
<u>M. C. Ruth</u>		✓			
<u>J. T. San Agustin</u>		✓			
<u>F. R. Santos</u>	+	✓			
<u>A. J. Shelton II</u>		✓			

18

1

2



Committee on Health, Welfare & Ecology Nineteenth Guam Legislature

163 Chalan Santo Papa • Agana, Guam 96910

Tel: 477-8527 / 9120

JOET. SAN AGUSTIN

*Chairman, Committee
on Health, Welfare
& Ecology*

February 10, 1988

Honorable Franklin J. Quitugua
Speaker
19th Guam Legislature
P.O. Box CB-1
Agana, Guam 96910

VIA: Chairman, Committee on Rules

Dear Mr. Speaker:

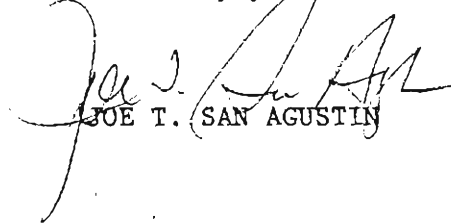
The Committee on Health, Welfare & Ecology, to which Bill No. 413 as Substituted was referred, wishes to report its findings and recommendations.

The Committee voting record is as follows:

To do pass	<u>8</u>
To not pass	<u>0</u>
To report out	<u>0</u>
Not Voting	<u>0</u>
Off-Island	<u>0</u>

A copy of the report and all other pertinent documents are attached for your information.

Sincerely yours,


JOE T. SAN AGUSTIN

attachments

...
Vice-Chairman, Committee
on Federal, Foreign, and
Legal Affairs

...
Member:
Committee on

Education,

General Governmental
Operations

Housing & Community
Development

Justice, Judiciary &
Criminal Justice

Rules

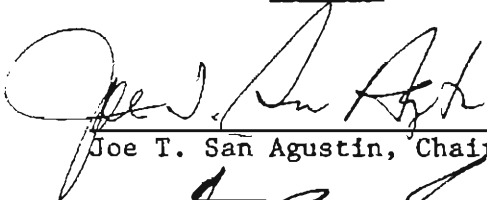
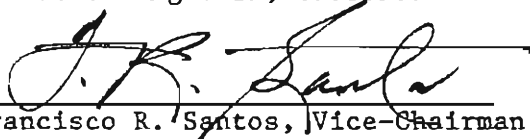
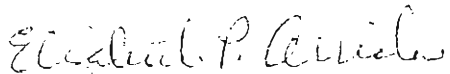
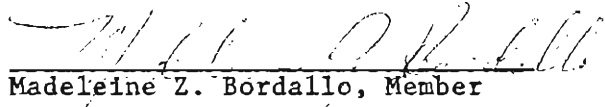
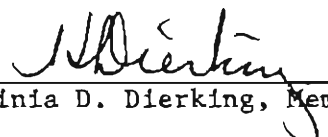
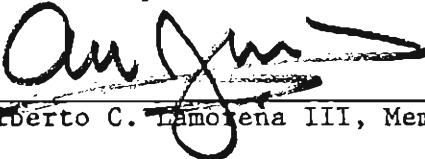
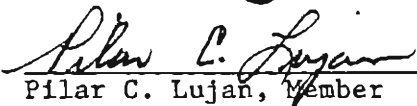
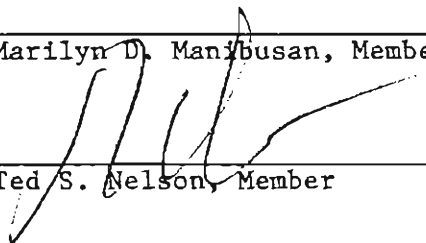
Tourism, Transportation
& Communication

Ways & Means

Youth, Human Resources,
Senior Citizens &
Cultural Affairs

VOTE SHEET
 COMMITTEE ON HEALTH, WELFARE & ECOLOGY
 BILL NO. 413 AS SUBSTITUTED

AN ACT TO REPEAL AND REENACT 10 GCA CHAPTER 82
 RELATING TO CIVIL COMMITMENT OF MENTALLY ILL
 PERSONS AND FOR OTHER PURPOSES.

<u>SENATOR</u>	<u>TO DO</u> <u>PASS</u>	<u>TO NOT</u> <u>PASS</u>	<u>TO REPORT</u> <u>OUT</u>	<u>COMMENTS</u>
 Joe T. San Agustin, Chairman	✓			
 Francisco R. Santos, Vice-Chairman	✓			
 Elizabeth P. Arriola, Member	✓			
 Madeleine Z. Bórdallo, Member	✓			
 Herminia D. Dierking, Member	✓			
Ernesto Espaldon, Member				
 Alberto C. Lamorena III, Member	X			
 Pilar C. Lujan, Member	✓			
Marilyn D. Manibusan, Member				
 Ted S. Nelson, Member	✓			

COMMITTEE ON HEALTH, WELFARE & ECOLOGY
Committee Report
Bill No. 413 as Substituted
AN ACT TO REPEAL AND REENACT 10.GCA CHAPTER 82
RELATING TO CIVIL COMMITMENT OF MENTALLY ILL
PERSONS AND FOR OTHER PURPOSES.

BACKGROUND

Bill No. 413 was introduced by Senator Alberto C. Lamorena III in response to a ruling by the Superior Court of Guam in the case of Ibanez vs. Shimizu in which the Court ruled that the existing statute covering the civil commitment of mentally ill persons was unconstitutional in that it lacked provisions for judicial review of commitment proceedings. The Bill as introduced by Senator Lamorena provides a mechanism for the voluntary and involuntary commitment of persons suffering from mental illness. The Bill, further provides legal safeguards for the rights of the individual and provides for court review of the actions of health professionals. Additional provisions are included providing for the appointment of a conservator of the patient's estate in the event that the individual is gravely disabled. The author substituted a second version of the Bill immediately prior to the Committee hearing and certain of the testimony received was addressed to the original version. Subsequent to the Committee hearing a third substitute version was drafted by the solicitor for the Department of Mental Health & Substance Abuse and submitted to the Committee. Additional testimony was offered relative to this version and resulted in the Bill which is now being reported out by the Committee.

PUBLIC HEARING AND TESTIMONY

A public hearing on Bill No. 413 was held on September 9, 1987, at 9:00 a.m. Senators present were Senators Joe T. San Agustin, Ernestor Espaldon, Francisco R. Santos, Elizabeth P. Arriola, Ted S. Nelson, Alberto C. Lamorena III, and Pilar C. Lujan.

The Committee heard and received testimony from the Department of Mental Health & Substance Abuse, the Attorney General's Office, Guam Legal Service Corporation and written testimony was submitted by the Guam Memorial Hospital and Guam Medical Society. A listing of the persons testifying and a summary of their comments follows:

DEPARTMENT OF MENTAL HEALTH & SUBSTANCE ABUSE

The Acting Director, Joseph A. Cameron testified in favor of the Bill and stated that the Bill reflected an overall change in the philosophy of the delivery of mental health care services. Mr. Cameron indicated that he was in favor of provisions which would permit the patient to refuse any treatment which involved Electro Convulsive Shock or psychosurgery. He questioned a provision which would permit 16 year old to voluntarily seek treatment and recommend that the age be raised to 18.

Ms. Mamie Balajadia, Ms. Beverly Olson and Dr. George Kallingal all indicated their support of the Bill and expressed particular support for those provisions which included clinical psychologists as qualified mental health professionals.

SUPERIOR COURT OF GUAM

The Honorable B.J. Cruz testified regarding the circumstances leading to the need for the Bill and the problems which had arisen subsequent to the court's decision in Ibanez vs. Shimizu. Judge Cruz expressed his opinion that the present Bill met the criteria as set forth by the court in that case.

OFFICE OF THE ATTORNEY GENERAL

Assistant Attorney General Donald Paillette, Solicitors Division, testified that this office supported the basic intent of the Bill; but requested certain changes in form. At the request of the Chairman, he agreed to submit a substitute bill which addressed their concerns.

GUAM LEGAL SERVICES CORPORATION

Attorney John Weisenberger, representing the GLSC testified on the basis of his many years as an advocate of the rights of the mentally handicapped. While basically, in favor of the Bill, Mr. Weisenberger did suggest certain changes. Among these were the following:

1. Whether a non-physician could be able to order the confinement of an individual;

2. Whether the right of a jury trial was in the best interest of the patient;

3. The use of the term "good cause" in denying certain civil liberties to the patients;

4. The possibility of a conservator circumventing the judicial process.

Subsequent to the presentation of a substitute bill, Mr. Weinsenberger met with Committee staff and suggested additional changes. These have been incorporated in the substituted bill which is reported out by the Committee.

GUAM MEMORIAL HOSPITAL AUTHORITY

The Administrator of GMHA, Mr. John C. Rosario introduced written testimony which objected to the placement of mental health services in an acute care hospital. The Administrator indicated that psychological examination and care of patients undergoing examination and evaluation was beyond the scope of the Hospital's services and might jeopardize the Hospital's efforts to regain JCAHO accreditation. The comments of Mr. Rosario were directed to the original version of the Bill and the areas which were found objectionable have been deleted from the substituted bill.

GUAM MEDICAL SOCIETY

The President of Guam Medical Society, K.M. Chen, M.D. introduced written testimony which indicated a concern relative to patients who were suspected of being "criminally insane". Guam Medical Society felt that such patients should be confined to the Department of Corrections while undergoing evaluation. The Bill presently before the Committee does not entertain the question of "criminal insanity" and this testimony does not address the areas of concern covered by this Bill.

COMMITTEE FINDINGS

The Committee finds that Bill No. 413 addresses a real need in the community and that the lack of legislation in this area has caused undue hardship to the citizens of our community and placed unwarranted burdens upon our judicial system.

COMMITTEE RECOMMENDATIONS

The Committee recommends to the full Legislature the expeditious approval and passage of Bill No. 413 as substituted.



GOVERNMENT OF GUAM
AGANA GUAM 96910

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE
TESTIMONY ON BILL 413

Good morning, chairman and members of the Committee on Health, Welfare and Ecology. I am honored to come before you today to testify in favor of Bill 413.

Subsequent to Section 82302, 82303 and 82304 of 10 Guam Code Annotated Chapter 82 declared unconstitutional by Honorable Janet Weeks, the professional staff of the Department has been working with the Attorney General's office since April 1987 as well as with attorney ~~Kathleen~~ Maraman on the amendment and revision of the law. Bill 413 is a result of the collaborative effort by this Department's professional staff, Attorney General Don Paulette and Ms. Maraman.

Kathleen

The purpose of this change in the mental health laws is to reflect the change in the philosophy regarding the rights of the mentally ill patients, and relatively new emphasis in the treatment of such patients. In times gone by, it was left to the legal system to designate when a person should be "locked up" in a mental facility. Given that the Judiciary is not trained in diagnosing or treating the clinical judgement of professionals who will initiate the restraint of individuals for clinical reasons. Likewise, as clinicians are not highly trained in the legalities and rights of the people they may feel need treatment, it may be best for the Public Defenders Office, Attorney General's Office, and/or the Judiciary to argue for the individual's treatment in a least restrictive atmosphere. Lastly, when the clinicians and the legal system agree that an individual is chronically impaired and is unable to provide for themselves on an ongoing basis, a means should be provided for the management of these cases. Accordingly, provisions for a limited guardianship for the mentally ill is contained in this provision of the involuntary statutes

*mental illness,
- may be
if for them
be as
ack of balance
sm*

Thank you for the opportunity to testify on Bill 413.

Joseph A. Cameron

Joseph A. Cameron
Acting Director



GUAM MEMORIAL HOSPITAL AUTHORITY

850 GOV. CARLOS G. CAMACHO ROAD
OKA, TAMUNING, GUAM 96911
TEL. 646-5801; 646-6876; 646-6711 thru 18
TELEX: (721) 6227

RECEIVED
NOV 20 1987



for Senator Espaldon

November 20, 1987

John C. Rosario
Chief Executive Officer

Honorable, Ernesto M. Espaldon, M.D.
Nineteenth Guam Legislature
Territory of Guam
P.O. Box CB-1
Agana, Guam

Dear Senator Espaldon:

In response to your request of October 29, 1987 for input from the hospital, I have prepared comments on Bills 413, 516, and 314, as well as comments pertaining to the issue of Dentists' using general anesthesia (Attached). I apologize for not responding sooner, but your original request for information, dated September 15, 1987 was never received.

Nevertheless, the Hospital appreciates the opportunity to comment on all health care bills. Should you have any questions, please feel free to contact my office.

Sincerely,

John C. Rosario
Hospital Administrator

Attachments



GUAM MEMORIAL HOSPITAL AUTHORITY

850 GOV. CARLOS G. CAMACHO ROAD
OKA, TAMUNING, GUAM 96911
TEL. 646-5801, 646-6876, 646-6711 thru 18
TELEX: (721) 6227



HOSPITAL ADMINISTRATOR'S LEGISLATIVE COMMENTS

Comments on Bill 413 "To Add Title VI to the Civil Procedure Code Related to Civil Commitment of Mentally Ill Persons and for Other Purposes.

The Guam Memorial Hospital Authority opposes Bill 413's proposal to designate GMHA as the health care provider that would perform psychological evaluations and examinations for individuals with possible mental disorders. The existing Department of Mental Health and Substance Abuse is currently responsible for providing such evaluations and examinations. Bill 413 would result in the duplication of services by two separate entities.

In addition Bill 413 proposes to inappropriately place mental health services in an acute care hospital. GMHA is responsible for providing only acute care services and should not be mandated to deliver health care services that are beyond its scope of operations. Otherwise, the hospital jeopardizes its chances of regaining JCAHO accreditation. The hospital's on-going Capital Improvement Projects to correct JCAH citations against GMHA, do not address the requirements for providing mental health care services. GMHA then should not be designated as the entity to perform psychological evaluations or examinations, nor should it be responsible for housing individuals during the course of such tests.

Comments on Bill 516 relating to Medical Treatment Decisions.

The Guam Memorial Hospital Authority Supports Bill 516 and the attempt to establish the manner in which an individual may choose to die with dignity, through the process of refusing to accept life-sustaining procedures in the event of terminal illness. This bill is comprehensive in its approach and addresses all pertinent issues.

Comments on the Use of Anesthetics by Dentists.

The bill appears to require that Dentists only administer general anesthesia on an outpatient basis if licensed to do so. The bill outlines various regulations involving training and licensure to meet these requirements.

As GMHA is an inpatient facility and we currently have rules and regulations governing the administration of general anesthesia, and the use of our operating facility for Dental Surgeons, the proposed law does not have any impact on the Hospital.



11-24-87

GUAM MEDICAL SOCIETY

P. O. BOX 8718, TAMUNING, GUAM 96911

P.O.Box AX, Guam Memorial Hospital

Senator Ernesto Espaldon, M.D.
Committee on the H.W.E.
19th Guam Legislature

Re: Bill 314, 413, 495, & 516

Dear Senator Espaldon:

This followings are the opinions of the Guam Medical Society on the above-mentioned Bills.

1. Bill 314: It is the concensus of the Society that a licenced chiropractor on Guam should be allowed to order x-rays of the spine for his clients at a licenced x-ray laboratory on this island. The films should be read by a licenced radiologist. It was not recommended that a chiropractor be allowed to own and run his own X-ray service.

2. Bill 413 on title VI to be added to the Civil Procedure Code relating to civil commitment of mentally ill persons is comprehensive and accurate. However, in Chapter II: Court-ordered evaluation, a provision is necessary to establish that those suspected criminally insane cases, when asked by the defnedent attorney for mental evaluation, should be segregated from the Dept. of Mental Health inpatient facility. Reason: It is a medical contraindication to confine a suspected 'criminally insane' in a ward where he is guarded by a police or secret sevcie and mixed freely with mentally ill patients. The paranoid schizophrenic patients, when seeing police in the ward, will deteriorate becasue of the disruption of the therapeutic environment by the court-order. It is mandatory that, during observeation/evaluation period for the court-order case, he should be detained in the DOC, not in Mental health ward, for evaluation. It has been a common practice of defense attorney in Guam to get court-order for his client without sufficient reason, simply to buy more time but at the expense of real mentally ill patients. This indiscremate practice by denfence lawyer should be stopped. The past litigations against the Dept. of Mental Health have all been brought on by those court-ordered cases.

3. Bill 495 and 516 relative to determination of death and right to make decisions to their own medical care are accurate and omprehensive. The Society concurs with, and welcomes passing of the bills.

If your Committee has any questions, please contact me.

Best wishes,

K.M. Chen, M.D.
K.M. Chen, M.D.

GOVERNMENT OF GUAM
AGADIA GUAM 19910

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE

TESTIMONY ON BILL 413

Good morning Senator Joe T. San Agustin, Chairman of the Committee on Health, Ecology and Welfare and members of this distinguished Committee.

I am Mamie Balajadia, Clinical Administrator of the Department of Mental Health and Substance Abuse and a Clinical Psychologist licensed to practice in the Territory of Guam.

I come before you today to testify in favor of Bill 413.

Bill 413, I believe, is a comprehensive and logical approach in addressing the issues and civil commitment procedures of the mentally ill individual in this Territory. It is hopeful that Bill 413, when enacted, would replace outdated and irrelevant sections of 10 Guam Code Annotated Chapter 82.

Bill 413 Section 2500 Definitions as stated represent what is applicable today in the practice of mental health care.

I am particularly pleased to see that the definition of professional staff includes the other mental health disciplines other than a licensed physician as stated in section 82101 of 10 Guam Code Annotated Chapter 82. Today, we all know and recognized that not all licensed physician are "specially qualified by training or by experience" to diagnose mental illness. Being that Guam is so short on the manpower of mental health professionals, particularly psychiatrist, the addition of clinical psychologist and psychiatric nurse would help to

Mamie C. Balajadia
Testimony on Bill 413
page 2

lighten the load of evaluations solely on the shoulder of the psychiatrist. At the same time, this Section is actually granting the patient or the person in question the opportunity to obtain other mental health professionals' opinions as well. In general, Bill 413 would enhance the work of the designated mental health professional in the evaluation, treatment and care of our mentally ill population.

I sincerely urge this Committee's and all members of the Nineteenth Guam Legislature early passage of this Bill.

I appreciate the opportunity to express my views.






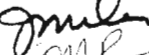
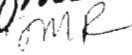
Respectfully Submitted,

Mamie C. Balajadia

Mamie C. Balajadia, Ed.D.
September 9, 1987

BILL NO. 413 (COR)

Introduced By:

A.C. LAMORENA III 
 E.M. ESPALDON
 M.C. RUTH 
 J. G. BAMBA 
 E.R. DUENAS 
 M.D.A. MANIBUSAO 
 J. MILES 
 J. RIVERA 

1 AN ACT TO ADD TITLE VI TO THE CIVIL PROCEDURE CODE
2 RELATING TO CIVIL COMMITMENT OF MENTALLY ILL PERSONS
AND FOR OTHER PURPOSES.

3 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

4 Section 1. A new Title VI is added to the Civil Procedure Code
5 to read:

6 "TITLE VI

7 MENTALLY ILL PERSONS

8 Chapter I

9 General Provision

10 Section 2500. Definitions. As used in this Title:

11 (a) 'Gravely disabled' means a mentally disordered person
12 who is unable to provide for his or her basic personal needs
13 for food, clothing or shelter.

14 (b) 'Mental disorder' means a severe impairment of emotional
15 processes, ability to exercise conscious control of one's actions
16 or ability to perceive reality or to reason or understand, which
17 impairment is manifested by instances of grossly disturbed
18 behavior or faulty perceptions; it does not include:

- 19 (1) epilepsy;
- 20 (2) mental retardation;
- 21 (3) brief periods of intoxication caused by substances
22 such as alcohol or drugs; or
- 23 (4) dependence upon or addiction to any substances
24 such as alcohol or drugs.

(c) 'Professional staff', 'professional person' or 'qualified mental health professional' means:

(1) a psychiatrist;

(2) a psychologist with a doctoral degree from an accredited clinical program; or

(3) a person with the following qualifications who has experience in the treatment and diagnosis of serious mental disorder:

(i) an earned graduate degree in psychology from an accredited clinical program;

(ii) an earned graduate degree in social work with field training in a psychiatric facility from an accredited program; or

(iii) a registered nurse with a graduate degree in psychiatric nursing in an accredited program.

Section 2501. Persons subject to court-ordered evaluation:

Privacy and dignity of person to be considered. Any person alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled, may be given an evaluation of his condition under a Superior Court order pursuant to this Title. The provisions of this Title shall be carried out with the utmost consideration for the privacy and dignity of the person for whom a court-ordered evaluation is requested. For all purposes under this Title, in the determination of issues of fact, the burden of proof shall be placed on the person or agency seeking the involuntary commitment of an individual, or the appointment of a conservator for an individual; and as to the involuntary commitment of an individual, the standard of proof shall be by clear and convincing evidence.

Section 2502. Petition for evaluation: Who may apply. Any individual may apply to the Attorney General for a petition alleging that there is in Guam a person who is, as a result of mental disorder, a danger to others, or to himself, or is gravely disabled and requesting that an evaluation of the person's condition be made.

Section 2503. Same: Preparation and filing: Prepetition

screening: Report to court. The Attorney General shall prepare the petition and all other forms required in the proceeding, and shall be responsible for filing the petition. Before filing the petition, the Attorney General shall request the Guam Memorial Hospital Authority to provide prepetition screening to determine whether there is probable cause to believe the allegations. The screening shall also determine whether the person will agree voluntarily to receive crisis intervention services or an evaluation in his own home or at Guam Memorial Hospital. Following prepetition screening, the Attorney General shall file the petition if satisfied that there is probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself, or gravely disabled, and that the person will not voluntarily receive evaluation or crisis intervention.

If the petition is filed, it shall be accompanied by a report containing the findings of the person or agency designated by the Guam Memorial Hospital Authority to provide prepetition screening. The prepetition screening report submitted to the Superior Court shall be confidential and shall be subject to the provisions of Section 3103 of this Title.

Section 2504. Criminal or civil liability for seeking petition with knowledge that person is not danger to self or others. Any individual who seeks a petition for court-ordered evaluation knowing that the person for whom the petition is sought is not, as a result of mental disorder, a danger to himself, or to others, or gravely disabled is guilty of a misdemeanor and may be held liable in civil damages by the person against whom the petition was sought.

Section 2505. Petition: Contents. The petition for a court-ordered evaluation shall contain the following:

(a) The name and address of the petitioner and his interest in the case.

(b) The name of the person alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled, and, if known to the petitioner, the address, age, sex, marital status, and occupation of the person.

(c) The facts upon which the allegations of the petition are based.

(d) The name of, as a respondent thereto, every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the person alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled, and the address of each such person, if known to the petitioner.

(e) Such other information as the court may require.

Section 2506. Evaluation: When order shall be issued:

Service: Who may accompany person to place of evaluation:

Detention proceedings on refusal or failure to appear: Maximum

period: Alternative proceedings following detention. Whenever it appears by petition pursuant to this Title, to the satisfaction of court that a person is, as a result of mental disorder, a danger to others, or to himself, or gravely disabled, and the person has refused or failed to accept evaluation voluntarily, the court shall issue an order notifying the person to submit to an evaluation at such time and place as designated by the court:

The order for an evaluation shall be served as provided in Section 2507 of this Title. The person shall be permitted to remain in his home or other place of his choosing prior to the time of evaluation, and shall be permitted to be accompanied by one or more of his relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. If the person to receive evaluation so requests, the individual or individuals who accompany him may be present during the evaluation.

If the person refuses or fails to appear for evaluation after having been properly notified, a peace officer shall take the person into custody and transport him to Guam Memorial Hospital. The person shall be evaluated as promptly as possible, and shall in no event be detained longer than seventy-two (72) hours under the court order, excluding Saturdays, Sundays, and holidays if treatment and evaluation services are not available on those days.

Persons who have been detained for evaluation shall be released, referred for care and treatment on a voluntary basis, certified for intensive treatment, or recommended for conservatorship pursuant

to this Title, as required.

Section 2507. Same: Service of petition and order: Detention notice on failure to appear. As promptly as possible, a copy of the petition and the order for evaluation shall be personally served on the person to be evaluated and the professional person in charge of the facility for treatment and evaluation named in the order, or his designee.

If the person to be evaluated fails to appear for an evaluation at the time designated in the order, the professional person in charge, or his designee, shall notify the person who served the order to have the person to be evaluated detained pursuant to the order.

Section 2508. Preservation and safeguarding of personal property of person taken into custody: Report: 'Responsible relative'. At the time a person is taken into custody for evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the person's personal property, the person taking him into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person. The person taking him into custody shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition, except that if a responsible relative or the guardian or conservator of the person is in possession of the person's property, the report shall include only the name of the relative or guardian or conservator and the location of the property, whereupon responsibility of the person taking him into custody for such property shall terminate.

As used in this section, 'responsible relative' includes the spouse, parent, adult child, or adult brother or sister of the person, except that it does not include the person who applied for the petition under this Title.

Section 2509. Detention in treatment and evaluation facility: Maximum period. If, upon evaluation, the person is found to be in

1 need of treatment because he is, as a result of mental disorder, a
2 danger to others, or to himself, or is gravely disabled, he may be
3 detained for treatment in a facility for 72-hour treatment and
4 evaluation; provided that gravely disabled persons may be detained
5 only after a finding that alternative, non-institutional care,
6 capable for providing appropriate care and support is not available
7 on an out-patient basis, and after a finding that the facility has
8 the capability to provide treatment which is appropriate to the need
9 of the gravely disabled individual. In no event shall he be
10 detained longer than 72 hours from the time of evaluation or
11 detention for evaluation, excluding Saturdays, Sundays and holidays
12 if treatment services are not available on those days.

13 Chapter II

14 Court-Ordered Evaluation for Persons

15 Impaired by Chronic Alcoholism

16 Section 2600. Criminal defendant before Court: When court may
17 order evaluation. Whenever a criminal defendant who appears, as a
18 result of chronic alcoholism, to be a danger to others, to himself,
19 or to be gravely disabled, is brought before any court, the court
20 may order the defendant's evaluation under conditions set forth
21 in this Title.

22 Section 2601. Same: Advice to be given by court: Election
23 by defendant as to proceedings: Right to counsel. Such a criminal
24 defendant must be advised of his right to immediately continue with
25 the criminal proceeding, and it is the duty of the court to apprise
26 the defendant fully of his option and of the consequences which will
27 occur if the defendant chooses the evaluation procedures. The
28 defendant shall have a right to legal counsel at the proceedings
29 at which the choice is made.

30 Section 2602. Same: Dismissal or suspension of criminal
31 charges until evaluation and detention completed: Subsequent
32 resumption or dismissal. If a court issues an order for evaluation
33 under conditions set forth in this Title, proceedings on the criminal
34 charge or charges then pending from which the order for evaluation
35 issued shall be dismissed or suspended until such time as the

1 evaluation of the defendant and the subsequent detention of the
2 defendant, if any, are completed. Upon completion of the evaluation
3 and detention, if any, the defendant shall be returned to the court
4 where the order for evaluation was made, and proceedings on the
5 criminal charge or charges shall be resumed or dismissed.

6 Section 2603. Same: Service. As promptly as possible, a
7 copy of the order for evaluation shall be personally served on the
8 person to be evaluated and the professional person in charge of the
9 facility for treatment and evaluation named in the order, or his
0 designee.

1 Section 2604. Preservation and safeguarding of personal
2 property of person undergoing evaluation: Report: 'Responsible
3 relative'. At the time a person is ordered to undergo evaluation,
4 or within a reasonable time thereafter, unless a responsible
5 relative or the guardian or conservator of the person is in
6 possession of the person's personal property, the person shall
7 take reasonable precautions to preserve and safeguard the personal
8 property in the possession of or on the premises occupied by the
9 person. The person responsible for taking him to the evaluation
0 facility shall then furnish to the court a report generally
1 describing the person's property so preserved and safeguarded and
2 its disposition, except that if a responsible relative or the
3 guardian or conservator of the person is in possession of the
4 person's property, the report shall include only the name of the
5 relative or guardian or conservator and the location of the property,
6 whereupon responsibility of the person responsible for taking him
7 to the evaluation facility for such property shall terminate.

8 As used in this section, 'responsible relative' includes the
9 spouse, parent, adult brother or sister of the person.

0 Section 2605. Detention for treatment: Maximum period. If,
1 upon evaluation, the person is found to be in need of treatment
2 because he is, as a result of impairment by chronic alcoholism, a
3 danger to others, or to himself, or is gravely disabled, he may be
4 detained for treatment in a facility for 72 hour treatment and
5 evaluation. In no event shall he be detained longer than 72 hours.

1 from the time of evaluation or detention for evaluation, excluding
2 Saturdays, Sundays and holidays if treatment services are not
3 available on those days.

4 Persons who have been detained for evaluation and treatment
5 shall be released to the custody of the court; referred for further
6 care and treatment on a voluntary basis, subject to the disposition
7 of the criminal action; certified for intensive treatment, or
8 recommended for conservatorship pursuant to this Title, as required.

9 Chapter III

0 Certification for Intensive Treatment

1 Section 2700. Who may be certified: Purpose: Maximum
2 period: Conditions. If a person detained for 72 hours under the
3 provisions of this Title, or under court order for evaluation
4 pursuant to this Title has received an evaluation, he may be
5 certified for not more than 14 days of involuntary intensive
6 treatment under the following conditions:

7 (a) The professional staff of the agency or facility
8 providing evaluation services has analyzed the person's condition
9 and has found the person is, as a result of mental disorder or
0 impairment by chronic alcoholism, a danger to others, or to himself,
1 or gravely disabled.

2 (b) The person has been advised of, but has not accepted,
3 voluntary treatment.

4 (c) The facility providing intensive treatment is equipped
5 and staffed to provide appropriate treatment and agrees to admit
6 the person.

7 (d) An individual who is gravely disabled as a result of
8 mental disorder may be certified for intensive treatment only after
9 a finding that alternative, non-institutional care, capable of
0 providing appropriate care and support is not available on an
1 out-patient basis, and after a finding that the facility has the
2 capability to provide treatment which is appropriate to the needs
3 of the gravely disabled individual.

4 Section 2701. Notice of certification: Signatures required.
5 For a person to be certified under this Title, a notice of

1 certification must be signed by the professional person in charge
2 of the agency or facility providing evaluation services and a
3 physician, who participated in the evaluation.

4 If the professional person in charge is the physician who
5 performed the medical evaluation, the second person to sign may be
6 another physician unless one is not available, in which case, a
7 psychologist, a social worker or a registered nurse who participated
8 in the evaluation shall sign the notice of certification.

9 Section 2702. A notice of certification is required for all
10 involuntary 14-day intensive treatment.

11 Section 2703. Same: Who are to receive copies. Copies of
12 the certification notice, shall be filed with the court and
13 personally delivered to the person certified. A copy shall also
14 be sent to the person's attorney, to the Attorney General, to the
15 public defender, and to the facility providing intensive treatment.

16 The person certified shall also be asked to designate any
17 person whom he wishes informed regarding his certification. If he
18 is incapable of making such a designation at the time of
19 certification, he shall be asked to designate such person as soon
20 as he is capable.

1 Section 2704. Maximum period: When termination of
2 certification and release of involuntary patient required.
3 Certification shall be for no more than 14 days, and shall terminate
4 as soon as, in the opinion of the professional person in charge of
5 the facility providing intensive treatment or his designee, the
6 individual has improved sufficiently for him to leave, or is
7 prepared to accept voluntary treatment on referral or to remain
8 in the facility providing intensive treatment on a voluntary basis.

9 Except as otherwise indicated in the conservatorship
10 provisions of Chapter VIII (commencing with Section 3200) of this
11 Title, or in the provisions of Chapter VI (commencing with
12 Section 3000) of this Title, a facility providing intensive
13 treatment must release all involuntary patients at the end of
14 14 days who do not agree to receive further treatment on a
15 voluntary basis.

1 Section 2705. Civil liability for knowingly and wilfully
2 detaining person for more than 14 days. Any individual who is
3 knowingly and wilfully responsible for detaining a person for
4 more than 14 days in violation of the provisions of Section 2704
5 of this Title is liable to that person in civil damages.

6 Section 2706. Immunity from liability of person in charge of
7 facility for action by person released within designated period.
8 The professional person in charge of the facility providing
9 intensive treatment, his designee, and the peace officer
10 responsible for the detainment of the person shall not be held
11 civilly or criminally liable for any action by a person released
12 at or before the end of 14 days pursuant to this Title.

13 Section 2707. Right to permit certified person to leave
14 facility for short periods. Nothing in this Title shall prohibit
15 the professional person in charge of an intensive treatment facility,
16 or his designee, from permitting a person certified for intensive
17 treatment to leave the facility for short periods during the
18 person's involuntary intensive treatment.

19 Chapter IV

20 Additional Intensive Treatment of Suicidal Persons

21 Section 2800. Who may be certified for treatment: Maximum
22 period: Conditions. At the expiration of the 14-day period of
23 intensive treatment any person who, during the 14-day period or the
24 72-hour evaluation period, threatened or attempted to take his own
25 life or who was detained for evaluation and treatment because he
26 threatened or attempted to take his own life and who continues to
27 present an imminent threat of taking his own life may be confined
28 for further intensive treatment pursuant to this Title for an
29 additional period not to exceed 14 days.

30 Such further intensive treatment may occur only under the
31 following conditions:

32 (a) The professional staff of the agency or facility
33 providing intensive treatment services has analyzed the person's
34 condition and has found that the person presents an imminent threat
35 of taking his own life.

(b) The person has been advised of, but has not accepted, voluntary treatment.

(c) The facility providing additional intensive treatment is equipped and staffed to provide such appropriate intensive treatment, and agrees to admit the person.

(d) The person has threatened or attempted to take his own life during the 14-day period of intensive treatment or the 72-hour evaluation period or was detained for evaluation and treatment because he threatened or attempted to take his own life.

Section 2801. Notice of certification: Signatures required. For a person to be certified under this Chapter, a notice of certification must be signed by the professional person in charge of the agency or facility providing evaluation services and a physician, if possible a Board-qualified psychiatrist, who participated in the evaluation.

If the professional person in charge is the physician who performed the medical evaluation, the second person to sign may be another physician unless one is not available, in which case, a psychologist, a social worker, or a registered nurse who participated in the evaluation shall sign the notice of certification.

Section 2802. A notice of certification for imminently suicidal persons is required for all involuntary 14-day intensive treatment, pursuant to this Chapter.

Section 2803. Same: Who are to receive copies. Copies of the notice of certification for imminently suicidal persons, shall be filed with the court and personally delivered to the person certified. A copy shall also be sent to the person's attorney, to the attorney general, to the public defender, and to the facility providing intensive treatment.

The person certified shall also be asked to designate any person whom he wishes informed regarding his certification. If he is incapable of making such a designation at the time of certification he shall be asked to designate such person as soon as he is capable.

Section 2804. Maximum period: When termination of certification and release of involuntary patient required.

Certification for imminently suicidal persons shall be for no more than 14 days of intensive treatment, and shall terminate as soon as, in the opinion of the professional person in charge of the facility providing intensive treatment or his designee, the individual has improved sufficiently for him to leave, or is prepared to accept voluntary treatment on referral or to remain in the facility providing intensive treatment on a voluntary basis.

Except as otherwise indicated in the conservatorship provisions of Chapter VIII (commencing with Section 3200) of this Title, or in the provisions of Chapter VI (commencing with Section 3000) of this Title, a facility providing additional intensive treatment must release all involuntary patients at the end of the 14-day period who do not agree to receive further treatment on a voluntary basis.

Section 2805. Civil liability for knowingly and willfully detaining person for more than 14 days. Any individual who is knowingly and willfully responsible for detaining a person for more than 14 days in violation of the provisions of Section 2804 of this Title is liable to that person in civil damages.

Section 2806. Immunity from liability. Neither the professional person in charge of the facility providing intensive treatment, nor his designee, shall be held civilly or criminally liable for any action by a person released at or before the 14 days pursuant to this Title.

Section 2807. Right to permit certified person to leave facility for short periods. Nothing in this Title shall prohibit the professional person in charge of an intensive treatment facility, or his designee, from permitting a person certified for intensive treatment to leave the facility for short periods during the person's involuntary intensive treatment.

Chapter V

Judicial Review

Section 2900. Right to hearing by habeas corpus: Request for release: Duties of staff member to whom made: Notice to person in charge and to Superior Court: Violation as misdemeanor: Form

for request. Every person detained by certification for intensive treatment shall have a right to a hearing by writ of habeas corpus for his release after he or his attorney has made a request to leave to any member of the treatment staff of a facility providing intensive treatment.

Any member of the treatment staff to whom a request for release is made shall promptly provide the person for his signature or mark a copy of the form set forth below. The member of the treatment staff shall fill in his own name and the date, and, if the person signs by mark, shall fill in the person's name, and shall then deliver the completed copy to professional person in charge, or his designee, notifying him of the request. As soon as possible, the person notified shall inform the Superior Court in which the facility is located of the request for release.

Any person who intentionally violates this section is guilty of a misdemeanor.

The form for a request for release shall be substantially as follows:

(Name of the facility) _____ day of ____ 19__

I, _____ (member of the staff), have today received a request for release from the undersigned patient.

(Signature or mark of patient)

Section 2901. Jurisdiction and venue: Information as to right to counsel: Appointment of attorney: Time for granting writ: When immediate release required. Judicial review shall be in the Superior Court. The person requesting to be released shall be informed of his right to counsel by the member of the treatment staff and by the court; and, if he so elects, the court shall immediately appoint the public defender or other attorney to assist him in preparation of a petition for the writ of habeas corpus and to represent him in the proceedings. The person shall pay the costs of such legal service if he is able.

The court shall grant a writ of habeas corpus or order an evidentiary hearing within two (2) judicial days after the petition

1 is filed. If the court finds that the person requesting release
2 is not, as a result of mental disorder or impairment by chronic
3 alcoholism, a danger to others, or to himself, or gravely disabled,
4 he shall be released immediately; provided that the court shall
5 not release gravely disabled individuals unless all of the condi-
6 tions set forth in Section 2700(d) of this Title for non-institu-
7 tional care are satisfied.

8 Section 2902. Finding under Section 2901 not admissible as
9 evidence in other proceeding. A finding under Section 2901 of
0 this Title shall not be admissible in evidence in any civil or
1 criminal proceeding.

2 Section 2903. Immunity from liability for persons exercising
3 authority in detention and treatment proceedings. Individuals
4 authorized under this Title to detain a person for 72-hour treatment
5 and evaluation pursuant to Chapter I (commencing with Section 2500)
6 of this Title, to certify a person for intensive treatment pursuant
7 to Chapter III (commencing with Section 2700) of this Title or to
8 file a petition for postcertification treatment for a person
9 pursuant to Chapter VI (commencing with Section 3000) of this
0 Title shall not be held either criminally or civilly liable for
1 exercising such authority in accordance with the law.

2 Chapter VI

3 Postcertification Procedures for 4 Imminently Dangerous Persons

5 Section 3000. Who is subject to confinement for further
6 treatment: Maximum additional period. At the expiration of the
7 14-day period of intensive treatment, a person may be confined for
8 further
9 further treatment pursuant to the provisions of this Chapter
0 for an additional period, not to exceed 90 days if he:

1 (a) Has threatened, attempted, or inflicted physical harm
2 upon the person of another after having been taken into custody
3 for evaluation and treatment, and who, as a result of mental
4 disorder, presents an imminent threat of substantial physical harm
5 to others; or

36 (b) Had attempted or inflicted physical harm upon the person c

another, that act having resulted in his being taken into custody and who presents, as a result of mental disorder, an imminent threat of substantial physical harm to others. For purposes of this Chapter 'custody' shall be construed to mean involuntary detainment under the provisions of this Title uninterrupted by any period of unconditioned release from a facility providing involuntary care and treatment.

Section 3001. Petition by person in charge of facility:
Contents: Affidavit: Service: Form. At any time during the 14-day intensive treatment period the professional person in charge of the facility, or his designee, may petition the Superior Court for an order requiring such person to undergo an additional period of treatment on the grounds set forth in Section 3000 of this Title. Such petition shall summarize the facts which support the contention that the person falls within the standard set forth in Section 3000 of this Title. The petition shall be supported by affidavits describing in detail the behavior which indicates that the person falls within the standard set forth in Section 3000 of this Title.

Copies of the petition for postcertification treatment and the affidavits in support thereof shall be served upon the person named in the petition on the same day as they are filed with the clerk of the Superior Court.

Section 3002. Attorney for person named in petition:
Appointment: Duties. At the time of filing of a petition for postcertification treatment the court shall appoint the public defender or other attorney to represent the person named in the petition if the person is financially unable to provide his own attorney. The attorney shall advise the person of his rights in relation to the proceeding and shall represent him before the court.

Section 3003. Court proceedings. Time: Constitutional guarantees to be observed: When jury required: Treatment to be continued until release orders or petition withdrawn. The court shall conduct the proceedings on the petition for postcertification treatment within four (4) judicial days of the filing of the

petition and in accordance with constitutional guarantees of due process of law.

If at the time of the hearing the person named in the petition requests a jury trial, such trial shall commence within ten (10) judicial days of the filing of the petition for postcertification treatment unless the person's attorney requests a continuance, which may be for a maximum of ten (10) additional judicial days. The decision of the jury must be unanimous in order to support the finding of facts required by Section 3004 of this Title.

Until a final decision on the merits by the court the person named in the petition shall continue to be treated in the intensive treatment facility until released by order of the Superior Court having jurisdiction over the action, or unless the petition for postcertification treatment is withdrawn. If no decision has been made within thirty (30) days after the filing of the petition, not including extensions of time requested by the person's attorney, the person shall be released.

Section 3004. Findings: Remand to custody of facility: Maximum period of additional treatment: Filing of new petition. If the court finds that the person named in the petition for postcertification treatment has (a) threatened, attempted, or actually inflicted physical harm upon the person of another after having been taken into custody for evaluation and treatment, and, as a result of mental disorder, presents an imminent threat of substantial physical harm to others; or (b) had attempted or inflicted physical harm upon the person of another, that act having resulted in his being taken into custody and who, as a result of mental disorder, presents an imminent threat of substantial physical harm to others, it shall remand him to the custody of the Guam Memorial Hospital Authority or other medical facility for a further period of intensive treatment not to exceed ninety (90) days from the date of court judgment. Said person shall be released from involuntary treatment at the expiration of ninety (90) days unless the professional person in charge of the hospital in which he is confined files a new petition

1 for postcertification treatment on the grounds that he has
2 treatened, attempted, or actually inflicted physical harm on
3 another during his period of postcertification treatment and he
4 is a person who, by reason of mental disorder, presents an
5 imminent threat of substantial physical harm to others. Such new
6 petition for postcertification treatment shall be filed in the
7 Superior Court.

8 Section 3005. Release prior to expiration of ninety
9 (90) days: Notice to court. Nothing in this Chapter shall
10 prohibit the professional person in charge of the hospital in
11 which the person is being involuntarily treated from releasing
12 him from treatment prior to the expiration of ninety (90) days
13 when in the opinion of the professional person in charge, the
14 person being involuntarily treated no longer constitutes an
15 imminent threat of substantial physical harm to others.

16 Whenever the professional person in charge of a hospital
17 providing postcertification treatment pursuant to this Chapter
18 releases a person prior to the expiration of ninety (90) days, the
19 professional person in charge shall notify the court which remanded
20 the person for treatment.

21 Section 3006. Immunity of hospital from liability for action
22 of person released. The professional person in charge of the
23 hospital providing ninety (90) days involuntary treatment shall
24 not be held civilly or criminally liable for any action by a person
25 released at or before the end of a ninety (90) day period.

26 Chapter VII

27 Legal and Civil Rights of Persons

28 Involuntarily Detained

29 Section 3100. Enumeration of rights: Posting of list in
30 English and Chamorro. Each person involuntarily detained for
31 evaluation or treatment under provisions of this Title shall have
32 the following rights, a list of which shall be prominently posted
33 in English and Chamorro in all facilities providing such services
34 and otherwise brought to his attention by such additional means as
35

the attorney general may require.

(a) Every person detained or committed under the provisions of these Chapters shall be entitled to prompt and adequate treatment, consistent with the provisions of this Chapter, provided by personnel who are duly qualified, licensed and competent to provide the necessary services, and in facilities that meet all applicable health and safety licensing requirements and standards.

(b) To the fullest extent possible, all treatment proposed to be administered shall be planned in consultation and collaboration with the person so detained and he/she shall be kept informed as to the nature, purpose and possible consequences of his/her treatment.

(c) The attorney for the detained person shall have the right at all times to examine all records of and plans for the treatment of the detained person and, upon request and reimbursement to the treating facility for reasonable costs of copying, to a photocopy of all or any part of such records and plan.

(d) Within twenty-four (24) hours of the signing of any order for commitment for fourteen (14) day treatment and continuously thereafter, the detained person's record at the treatment facility shall contain detailed, written information stating the mental health treatment being provided and the specific objectives of such treatment.

(e) Within five (5) days after the entry of an order committing a person to ninety (90) day treatment, the qualified mental health professional in charge of the detained person's treatment shall prepare an individual treatment plan.

(f) To refuse electroconvulsive therapy.

(g) To refuse psychosurgery.

Section 3101. Who may deny rights to person detained:

Grounds: Entry in treatment records: Information to be made available to person detained, attorney, etc. A person's rights under Section 3100 of this Title may be denied for good cause only by the professional person in charge of the facility or his designee.

Denial of an involuntarily detained person's rights shall in all cases be entered into the person's treatment record.

Information pertaining to a denial of rights contained in the person's treatment record shall be made available to the person, his attorney, or his conservator or guardian.

Section 3102. Who are entitled to rights: Right not specifically denied to be retained. Every person involuntarily detained under the provisions of this Title or under certification for intensive treatment or postcertification treatment in any public or private mental institution or hospital, including a conservatee placed in any medical, psychiatric or nursing facility, shall be entitled to all rights set forth in this part and shall retain all rights not specifically denied him under this Title.

Section 3103. Confidentiality of information in records: Persons to whom disclosure authorized. All information and records obtained in the course of providing services to either voluntary or involuntary recipients of services shall be confidential.

Information and records may be disclosed only:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings;

(b) When the physician in charge of the patient, with the approval of the patient, designates persons to whom information or records may be released, except that nothing in this Chapter shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family. No record may be released under this subdivision after ten (10) years have elapsed since the record was made;

(c) To the extent necessary to make claims on behalf of a recipient for aid, insurance, or medical assistance to which he may be entitled;

(d) If the recipient of services is a ward or conservatee, and his guardian or conservator designates, in writing, persons to

whom records or information may be disclosed, except that nothing in this Chapter shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(e) For research, provided, that the attorney general provides by regulation, rules for the conduct of research. Such rules shall include, but need not be limited to, the requirement that all researchers must sign an oath of confidentiality as follows:

Date: _____

As a condition of doing research concerning persons who have received services from _____

_____ (fill in the facility, agency or person), I _____, agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that unauthorized release of confidential information may make me subject to a civil action under provisions of Title VI of the Code of Civil Procedure.

Signed: _____

(f) To the courts, as necessary to the administration of justice.

Section 3104. 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.

Section 3105. Action for wrongful release of confidential information or records: Penalty or treble damages: Injunction. Any person may bring an action against an individual 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:

- (1) Five Hundred Dollars (\$500).
- (2) Three times the amount of actual damages, if any, sustained by the plaintiff.

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

Section 3106. Presumption of incompetency due to evaluation or treatment prohibited: Statement of law to be given person leaving facility. No person may be presumed to be incompetent because he or she has been evaluated or treated for mental disorder or chronic alcoholism; regardless of whether such evaluation or treatment was voluntarily or involuntarily received. Any person who leaves a public or private mental health facility following evaluation or treatment for mental disorder or chronic alcoholism, regardless of whether that evaluation or treatment was voluntarily or involuntarily received, shall be given a statement of Guam law as stated in this paragraph.

Chapter VIII

Conservatorship for Gravely Disabled Persons

Section 3200. For whom conservator may be appointed:

Procedure: Exceptions. A conservator of the person, of the estate, or of the person and the estate may be appointed for any person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism.

The procedure for establishing conservatorship under this Chapter shall be the same as that provided in Division IV (commencing with Section 1400) of the Probate Code, except as follows:

(a) A conservator may be appointed for a gravely disabled minor.

(b) When a gravely disabled person already has a guardian or conservator, the Superior Court under this Chapter may retain that guardian or conservator, or remove him and appoint a new guardian

or conservator under the provisions of this Chapter.

(c) The person for whom conservatorship is sought shall have the right to demand a jury trial on the issue whether he is gravely disabled. This right shall also apply in subsequent proceedings to reestablish conservatorship.

(d) The Superior Court may grant a conservator, appointed under this Chapter, with the power to place his/her conservatee in a facility for psychiatric or psychological care only after finding that alternative, non-institutional care and support is not available on an out-patient basis, and after finding that the facility has the capability to provide treatment which is appropriate to the needs of the gravely disabled individual.

Section 3201. Who may recommend conservatorship: Petition by investigating officer: Pleading and filing requirements for temporary conservatorship: Procedure. When the professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment determines that a person in his care is gravely disabled as a result of mental disorder or impairment by chronic alcoholism and is unwilling to accept, or incapable of accepting, treatment voluntarily, he may recommend conservatorship to the officer providing conservatorship investigation.

If the officer providing conservatorship investigation concurs with the recommendation, he shall petition the Superior Court, to establish conservatorship.

Where temporary conservatorship is indicated, the fact shall be alternatively pleaded in the petition.

Section 3202. Temporary conservatorship: Powers and duties of conservator: Maximum period. A temporary conservator under this Chapter shall determine what arrangements are necessary to provide the person with food, shelter, and care pending the determination of conservatorship. He shall give preference to arrangements which allow the person to return to his home, family or friends. If necessary, the temporary conservator may require the person to be detained in a facility providing intensive treatment pending the

determination of conservatorship. Any person so detained shall have the same right to judicial review set forth in Chapter V of this Title.

Temporary conservatorship shall continue pending a hearing to consider the appointment of a conservator, the trial and any appeals, but in no event longer than a year. The powers of the temporary conservator shall be those granted in the decree, but in no event may they be broader than the powers which may be granted a conservator.

Section 3203. Duties of investigating officer: Report to court: Contents: Recommendations as to alternatives: Disposition of copies. The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship and shall recommend conservatorship to the court only if no suitable alternatives are available. The report to the court shall be comprehensive and shall contain all relevant aspects of the person's medical, psychological, financial, family, vocational and social condition, and shall contain all available information concerning the person's real and personal property. The facilities providing intensive treatment or comprehensive evaluation shall disclose any records or information which may facilitate the investigation. If the officer providing conservatorship investigation recommends against conservatorship, he shall set forth all alternatives available. A copy of the report shall be transmitted to the individual who originally recommended conservatorship, to the person or agency, if any, recommended to serve as conservator, and to the person recommended for conservatorship.

Section 3204. Notice by nominee of willingness to accept conservatorship: Duties of investigating officer on nonacceptance. The person recommended to serve as conservator shall promptly notify the officer providing conservatorship investigation whether he will accept the position if appointed. If notified that the person or agency recommended will not accept the position if appointed, the officer providing conservatorship investigation shall promptly recommend another person to serve as conservator.

Section 3205. Recommendation of person or agency to serve as conservator: Who is ineligible: Right of department to serve as guardian. If the conservatorship investigation results in a recommendation for conservatorship, the recommendation shall designate the most suitable person or agency to serve as a conservator. No person, nor agency, shall be designated as conservator whose interest activities, obligations or responsibilities are such as to compromise his or their ability to represent and safeguard the interests of the conservatee.

Section 3206. Report by investigating officer: Recommendations as to conservator's powers and duties: Signed agreement by nominee. The report of the officer providing conservatorship investigation shall contain his recommendations concerning the powers to be granted to, and the duties to be imposed upon the conservator, and the legal disabilities to be imposed upon the conservatee. The report to the court shall also contain an agreement signed by the person or agency recommended to serve as conservator certifying that the person or agency is able and willing to serve as conservator.

Section 3207. Powers of conservator: Recommendations in report as to additional powers: Disabilities of proposed conservatee. All conservators shall have the powers as the court may designate. The report shall also recommend for or against the imposition of each of the following disabilities on the proposed conservatee:

(a) The right to possess and carry firearms.

(b) The privilege of possessing a license to operate a motor vehicle. If the report recommends against this right and if the court follows the recommendation, the agency providing conservatorship investigation shall, upon the appointment of the conservator, so notify the Department of Revenue and Taxation Licensing Section.

(c) The right to enter into contracts. The officer may recommend against the person having the right to enter specified types of transactions or transactions in excess of specified money amounts.

Section 3208. Right to place conservatee in medical facility, hospital, alcoholic treatment center, etc.: Notice to investigating

officer: Evaluation. A conservator appointed pursuant to this Chapter shall have the right, if specified in the court order, to place his conservatee in a medical, psychiatric, nursing, or other facility, or a hospital, a United States government hospital, or other non-medical facility approved by the Department of Public Health and Social Services; or in addition to any of the foregoing, in cases of chronic alcoholism, to an alcoholic treatment center. If the conservatee is not to be placed in his own home or the home of a relative, first priority shall be to placement in a suitable facility as close as possible to his home or the home of a relative. Before doing so, the conservator shall inform the officer providing conservatorship investigation and shall, if requested by the officer, submit his conservatee to an evaluation pursuant to this Title to determine whether such action is necessary.

Section 3209. Alternative placement after notice by person in charge of facility. A conservator appointed under this Chapter shall find alternative placement for his conservatee within seven (7) days after he is notified by the person in charge of the facility serving the conservatee that the conservatee no longer needs the care or treatment offered by that facility.

If alternative placement cannot be found at the end of the 7-day period the conservator shall confer with the professional person in charge of the facility and they shall then determine the earliest practicable date when such alternative placement may be obtained.

Section 3210. Powers and duties of conservators and legal disabilities of conservatees: Designation of standards. The attorney general shall designate by regulation, standards to be followed by the officer providing conservatorship investigation in recommending for or against specific powers and duties of conservators and legal disabilities of conservatees under this Chapter.

Section 3211. Termination: Method of determining period of service: Petition for reappointment. Conservatorship initiated pursuant to this Chapter shall automatically terminate one (1) year

after the appointment of the conservator by the Superior Court. The period of service of a temporary conservator shall not be included in the one-year period. If upon the termination of an initial or a succeeding period of conservatorship the conservator determines that conservatorship is still required, he may petition the Superior Court for his reappointment as conservator for a succeeding one-year period. The petition must include the opinion of two (2) physicians that the conservatee is still gravely disabled as a result of mental disorder or impairment by chronic alcoholism. In the event that the conservator is unable to obtain the opinion of two (2) physicians, he shall request that the court appoint them.

Section 3212. Same: Notice to conservator and conservatee: Time: Contents: Issuance of decree. The clerk of the Superior Court shall notify each conservator, his conservatee and the person in charge of the facility in which the person resides, and the conservatee's attorney, one (1) month before the termination of the one-year period. Notification shall be by certified mail.

If the conservator does not petition to reestablish conservatorship at or before the termination of the one-year period, the court shall issue a decree terminating conservatorship. The decree shall be sent to the conservator and his conservatee by certified mail.

Section 3213. Ratification of good-faith acts of conservator beyond maximum period: Decree. In the event the conservator continues in good faith to act within the powers granted him in the original decree of conservatorship beyond the one-year period, he may petition for and shall be granted a decree ratifying his acts as conservator beyond the one-year period. The decree shall provide for a retroactive appointment of the conservator to provide continuity of authority in those cases where the conservator did not apply in time for reappointment.

Section 3214. Petition by conservatee for rehearing. At any time, but not to exceed more than once each six (6) months, the conservatee may petition the Superior Court for a rehearing as to

his status as a conservatee.

Section 3215. Time for hearing petitions: Attorney for conservatee. All petitions under this Chapter shall be heard within thirty (30) days and an attorney shall be provided for the conservatee or proposed conservatee.

Section 3216. Roster of gravely disabled patients: Investigation as to need for conservatorship: Availability of records to investigating officer. It shall be the responsibility of each hospital to compile a roster no later than July 1, 1980, of those mentally disordered or chronic alcoholic patients within the institution who are gravely disabled. The roster shall indicate the last residence of each patient. The officer providing conservatorship investigation shall be given a copy of the names and pertinent records of the patients and shall investigate the need of for conservatorship for such patients as provided in this Chapter.

Each hospital and the Department of Public Health and Social Services shall make their records concerning such patients available to the officer providing conservatorship investigation.

Section 3217. Chapter provisions to supersede commitments under former provisions. Conservatorship established under this Chapter shall supersede any commitment under former provisions of Guam Codes relating to inebriates or the mentally ill.

Section 3218. Former conservatee not to be presumed incompetent. A person who is no longer a conservatee shall not be presumed to be incompetent by virtue of his having been a conservatee under the provisions of this Title."

Section 2. Chapter III of Title XLVII being Sections 49200 through 49227 of the Government Code is repealed.

Section 3. Subsection (a) of Section 80.20 of the Criminal and Correctional Code (as enacted by Public Law 13- 185) is amended to read:

"(a) When a person prosecuted for a felony of the third degree, misdemeanor or petty misdemeanor is a chronic alcoholic, narcotic addict or person suffering from mental abnormality, the court may (1) order the civil commitment of such person to a hospital or other institution for medical, psychiatric or other

rehabilitative treatment in accordance with Title VI of the Civil Procedure Code and (2) dismiss the prosecution. The order of commitment may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution."

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