Public Law 13-185
Thirteenth Guam Legislature
(Bill 661)

AN ACT

An Act to establish a Criminal and Correctional Code thereby consolidating and revising the law relating to Crimes and Corrections.

Be it enacted by the People of the Territory of Guam:

Section 1. The Criminal and Correctional Code is enacted to read:

"THE CRIMINAL AND CORRECTIONAL CODE OF GUAM:

CHAPTER 1. PRELIMINARY PROVISIONS; DEFINITIONS

Article 1. Preliminary provisions; construction

1.10. This code shall be known as the Criminal and Correctional Code.

1.12. If any provision of this code or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

1.14. (a) The general purposes of the provisions governing the definition of offenses are:

(1) to forbid, prevent, and condemn conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;

(2) to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection;

(3) to subject to public control persons whose conduct indicates that they are disposed to commit offenses;

(4) to give fair warning of the nature of the conduct prescribed and of the sentences authorized upon conviction:

(5) to differentiate on reasonable grounds between serious and minor offenses; and

(6) to define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault.

(b) The general purposes of the provisions governing the sentencing of offenders are:

(1) to prevent and condemn the commission of offenses;

(2) to promote the correction and rehabilitation of offenders;

(3) to insure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protection;

(4) to safeguard offenders against excessive, disproportionate or arbitrary punishment;

(5) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;

(6) to differentiate among offenders with a view to a just individualization in their treatment; and

(7) to advance the use of generally accepted scientific methods and knowledge in sentencing offenders.

(c) The provisions of this code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this section and the special purposes of the particular provision involved. The discretionary powers conferred by this code shall be exercised in accordance with the criteria stated in the code and, insofar as such criteria are not decisive, to further the general purposes stated in this section.

1.16. (a) Except as otherwise provided in this section, a person may be convicted under the law of this Territory of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(1) the conduct which is an element of the offense or the result which is such an element occurs within this Territory;

(2) conduct occurring outside the Territory is sufficient under the law of this Territory to constitute an attempt to commit an offense within the Territory;

(3) conduct occurring outside the Territory is sufficient under the law of this Territory to constitute a conspiracy to commit an offense within the Territory and an overt act in furtherance of such conspiracy occurs within the Territory;

(4) conduct occurring within the Territory establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this Territory;

(5) the offense consists of the omission to perform a legal duty imposed by the law of this Territory with respect to domicile, residence or a relationship to a person, thing or transaction in the Territory; or

(6) the offense is based on a statute of this Territory which expressly prohibits conduct outside the Territory, when the conduct bear a reasonable relation to a legitimate interest of this Territory and the person knows or should know that his conduct is likely to affect that interest.

(b) Paragraph (1) of subsection (a) does not apply when either causing a specified result or an intent to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(c) Paragraph (1) of subsection (a) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the Territory which would not constitute an offense if the result had occurred there, unless the person intentionally or knowingly caused the result within the Territory.

(d) When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result," within the meaning of paragraph (1) of subsection (a) and if the body of a homicide victim is found within the Territory, it is presumed that such result occurred within the Territory.

(e) The Territory includes the land and water and the air space above such land and water with respect to which the Territory has legislative jurisdiction.

(f) Notwithstanding that territorial jurisdiction may be found under this section, the court may dismiss, hold in abeyance for up to six months, or, with the permission of the defendant, place on an inactive list a criminal prosecution under the law of this Territory where it appears that such action is in the interests of justice because the defendant is being or is likely to be prosecuted for an offense based on the same conduct in another jurisdiction and this Territory's interest will be adequately served by a prosecution in the other jurisdiction.

1.18 (a) An offense defined by this code or by any other statute of this territory, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors or petty misdemeanors.

(b) A crime is a felony if it is so designated in this code or if persons convicted thereof may be sentenced to imprisonment for a term which apart from an extended term, is in excess of one year.

(c) A crime is a misdemeanor if it is so designated in this code or in a statute other than this code enacted subsequent thereto.

(d) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(e) A crime is a petty misdemeanor if it is so designated in this code or in a statute other than this code enacted subsequent thereto or if it is defined by a statute other than this code which now provides that persons convicted thereof may be sentenced to imprisonment for a maximum term of less than one year.

(f) An offense defined by this code or by any other statute of this Territory constitutes a violation if it is so designated in this code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(g) An offense defined by any statute of this Territory other than this code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this code.

1.19. (a) Felonies defined by this code are classified, for the purpose of sentence, into three degrees, as follows:

(1) felonies of the first degree;

(2) felonies of the second degree;

(3) felonies of the third degree.

Any crime declared to be a felony, without specification of degree, is of the third degree.

(b) Nothwithstanding any other provision of law, a felony defined by any statute of this territory other than this code shall constitute for the purpose of sentence a felony of this Territory.

(b) The provisions of this code shall apply to offenses defined by other statutes, unless otherwise expressly provided or unless the context otherwise requires.

(c) Nothing in this code shall affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(d) Nothing in this code shall bar or suspend any liability to damages, penalty, forfeiture, or other remedy otherwise authorized by law to be recovered or enforced in any civil action or proceeding, for any conduct punishable by this code.

1.22. When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other as defined in Section 105.58 of the Criminal Procedure Code;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other;

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(c) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

1.24. A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an aquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(b) The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of fact. Termination under any of the following circumstances is not improper:

(1) the defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination;

(2) the trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed; or

(3) the trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity.

1.26. A prosecution of a defendant for a violation of a different provision of the statutes or based on different facts than a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal or in a conviction as defined in Section 1.24 and the subsequent prosecution is for:

(1) any offense of which the defendant could have been convicted on the first prosecution;

(2) any offense of which the defendant should have been tried on the first prosecution under subsection (b) of Section 65.30 of the Criminal Procedure Code unless the court ordered a separate trial of the charge of such offense; or

(3) the same conduct, unless (A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requiries proof of a fact not required by the other and the law defining each of such offenses is intended to prefent a substantially different harm or evil, or (B) the second offense was not consummated when the former trial began.

(b) The former prosecution was terminated, after the complaint was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(c) The former prosecution was improperly terminated, as improper termination is defined in Section 1.24, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

1.28. When conduct constitutes an offense within the concurrent jurisdiction of this Territory and of the United States or any State, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this Territory under the following circumstances:

(a) the first prosecution resulted in an acquittal or in a conviction as defined in Section 1.24 and the subsequent prosecution is based on the same conduct, unless (1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or (2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or (3) the second offense was not consummated when the former trial began; or

(b) the former prosecution was terminated after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

1.30. A prosecution is not a bar within the meaning of Sections 1.24, 1.26 and 1.28 under either of the following circumstances:

(a) the former prosecution was before a court which lacked jurisdiction over the defendant or the offense tried in that court; or

(b) the former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a petition for post-conviction relief or similar process, except that any bar as to reprosecution for a greater inclusive offense created by subsection (a) of Section 1.24 shall apply.

1.34. Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this code.

1.36. Chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

1.38. Whenever any reference is made to any portion of this code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

1.42. The present tense includes the past and future tenses; and the future, the present.

1.44. The masculine gender includes the feminine and neuter.

1.46. The singular number includes the plural; and the plural, the singular.

1.48. "Shall" is mandatory and "may" is permissive.

1.50. This code does not affect any authority otherwise conferred by law upon any court-martial or other military authority or officer to prosecute and punish persons violating codes or laws.

Article 2. Definitions

1.60. Unless otherwise expressly stated:

(a) "chapter" means a chapter of this code.

(b) "article" means an article of the chapter in which that term occurs.

(c) "section" means a section of this code.

(d) "subsection" means a subsection of the section in which that term occurs.

(e) "paragraph" means a paragraph of the subsection in which that term occurs.

1.70. As used in this code, "peace officer" has the meaning provided by Section 5.55 of the Criminal Procedure Code.

1.80. As used in this code, "Territory" means the Territory of Guam.

CHAPTER 4. GENERAL PRINCIPLES OF LIABILITY

4.10. A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

4.15. (a) A voluntary act is one performed consciously as a result of effort or determination.

(b) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control of it for a sufficient time to have been able to terminate his control.

4.20. A person is not guilty of an offense if his liability is based solely on an omission unless the law defining the offense expressly so provides, or a duty to perform the act is otherwise imposed by law.

4.25. Except as provided in Section 4.45, a person is not guilty of a crime unless he acts intentionally, knowingly, recklessly or with criminal negligence, as the law may require, with respect to the conduct, the result thereof or the attendant circumstances which constitute the material elements of the crime.

4.30. (a) A person acts intentionally, or with intent, with respect to his conduct or to a result thereof when it is his conscious purpose to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to his conduct or to attendant circumstances when he is aware of the nature of his conduct or that those circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is practically certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to attendant circumstances or the result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or that his conduct will cause the result and his failure to be aware of the risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to attendant circumstances or the result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or that his conduct will cause the result and his failure to be aware of the risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

4.35. (a) If the definition of an offense prescribes a culpable mental state but does not specify the conduct, attendant circumstances or result to which it applies, the prescribed culpable mental state shall apply to each such material element.

(b) If the definition of a crime prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(c) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of an offense unless the statute clearly so provides.

4.40. Except as provided in Section 4.45, if the definition of a crime does not expressly prescribe a culpable mental state, a culpable mental state is nonetheless required and is established only if a person acts intentionally, knowingly or recklessly.

4.45. The culpable mental state requirements of Section 4.25 and Section 4.40 do not apply if the offense is a violation or if the law defining the offense clearly indicates a purpose to dispense with any culpable mental state requirement.

4.50. (a) An element of an offense which requires that the defendant have caused a particular result is established when his conduct is an antecedent but for which the result would not have occurred, and,

(1) if the offense requires that the defendant intentionally or knowingly cause the result, that the actual result, as it occurred,

(A) is within the purpose or contemplation of the defendant, whether the purpose or contemplation extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that designed or contemplated and is not too remote, accidental in its occurrence or dependant on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(2) if the offense requires that the defendant recklessly or negligently cause the result, that the actual result, as it occurred,

(A) is within the risk of which the defendant was or should have been aware, whether that risk extends to natural events or to the conduct of another, or, if not,

(B) involves the same kind of injury or harm as that recklessly or negligently risked and is not too remote, accidental in its occurrence or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense;

(3) if the offense imposes strict liability, that the actual result, as it occurred, is a probable consequence of the defendant's conduct.

(b) A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed, contemplated or risked is that a different person or property was injured or affected or that a less serious or less extensive injury or harm occurred.

4.55. A person is guilty of an offense if, acting with the culpability required for the offense, he causes or aids an innocent or non-responsible person to engage in conduct prohibited by the definition of the offense.

4.60. A person is guilty of an offense if, with the intention of promoting or assisting in the commission of the offense, he induces or aids another person to commit the offense. If the definition of the offense includes lesser offenses, the offense of which each person shall be guilty shall be determined according to his own culpable mental state and to those aggravating or mitigating factors which apply to him.

4.65. A person is guilty of criminal facilitation when, knowing that another person intends to engage in conduct which in fact constitutes a crime, he knowingly furnishes substantial assistance to him.

Criminal facilitation of a felony of the first degree is a felony of the third degree.

Criminal facilitation of a felony of the second or of the third degree is a misdemeanor.

Criminal facilitation of a misdemeanor or petty misdemeanor is a petty misdemeanor.

4.70. In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is no defense that:

(a) the offense can be committed only by a particular class of persons to which the defendant does not belong; or

(b) the other person has legal immunity from prosecution, or has not been prosecuted for or convicted of an offense based upon the conduct in question, or has previously been acquitted.

4.75. Unless otherwise provided by law, in any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is a defense that:

(a) the defendant was a victim of the offense; or

(b) under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant withdrew from participation in the offense and made a reasonable effort to prevent its commission.

4.80. (a) A corporation may be convicted of:

(1) any offense committed in furtherance of its affairs on the basis of conduct performed, authorized, requested, commanded, or recklessly tolerated by (A) the board of directors; (B) a managerial agent acting in the scope of his employment; or (C) any other person for whose conduct the statute defining the offense provides criminal responsibility;

(2) any offense consisting of a failure to perform a duty imposed by law; or

(3) any petty misdemeanor or violation committed by an agent of the corporation acting in the scope of his employment in furtherance of its affairs.

(b) It is no defense that an individual upon whose conduct liability of the corporation is based has not been prosecuted or convicted, has been convicted of a different offense or is immune from prosecution.

(c) As used in this section, "managerial agent" means an agent of the corporation having duties of such responsibility that his conduct may fairly be found to represent the policy of the corporation.

CHAPTER 7. EXEMPTIONS AND DEFENSES

Article 1. Exemptions

7.10. No person may be tried for or convicted of an offense if:

(a) his age at the time of the conduct charged as an offense places him within the exclusive jurisdiction of the juvenile court;

(b) he was made the subject of a petition to commence proceedings in the juvenile court because of having committed the offense and the juvenile court has not made an order that he be prosecuted under general law; or

(c) he was certified to the juvenile court and the juvenile court has not made an order directing that he be prosecuted under general law.

Article 2. Mental responsibility

7.16. A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental illness, disease or defect, he lacked substantial capacity to know or understand what he was doing, or to know or understand that his conduct was wrongful, or to control his actions.

7.19. Evidence that the defendant suffered from mental illness, disease or defect is admissible whenever it is relevant to prove the defendant's state of mind.

7.22. (a) Mental illness, disease or defect, precluding responsibility, is an affirmative defense which the defendant must prove by a preponderance of the evidence.

(b) The defendant may not introduce evidence that he is not criminally responsible, as defined in Section 7.16, unless he has entered a plea of not guilty by reason of mental illness, disease or defect.

(c) The defendant may not, except upon good cause shown, introduce in his case in chief expert testimony regarding his state of mind pursuant to Section 7.19 unless he has given notice as provided in subsection (d).

(d) The defendant shall plead not guilty by reason of mental illness, disease or defect, or shall give notice, in open court or in writing, that his mental condition will or may be in issue not later than ten days after his arraignment or at such later time as the court for good cause may allow. If such notice is given prior to or at the time or arraignment, the court shall defer the entry of a plea until the filing of the reports provided in Section 7.25. Upon the giving of such notice or upon a plea of not guilty by reason of mental illness, disease or defect, the court shall order an examination to be conducted, as provided in Section 7.25.

(e) Upon the filing of the reports provided in Section 7.25, the defendant shall plead if he has not previously done so and the court shall set a date for trial. The trial shall not be held earlier than ten days after the filing of the reports.

7.25 (a) Whenever a plea of not guilty by reason of mental illness, disease or defect is entered or a notice is given under Section 7.22, the court shall appoint at least one qualified psychiatrist or other qualified person (hereinafter referred to as psychiatrist) to examine the defendant and to report upon his mental condition.

(b) Whenever, in the opinion of the court, any other expert evidence concerning the defendant's mental condition is, or will be required by the court or either party, the court shall appoint one or more such experts to examine the defendant and to report upon his mental condition as the court may direct.

(c) In addition to the expert witnesses appointed by the court, either party in a criminal action may retain other psychiatrists or other experts to examine the defendant and to report upon his mental condition. Experts retained pursuant to this section shall be permitted to have reasonable access to the defendant for the purposes of examination and the giving of testimony.

(d) The psychiatrists and other experts appointed by the court and those called by the prosecuting attorney shall be allowed, in addition to their actual traveling expenses, such fees as in the discretion of the court seem reasonable.

(e) On recommendation of the psychiatrists appointed by the court, the court may order the defendant committed to the Guam Memorial Hospital or any other suitable facility for observation and examination as it may designate for a period not to exceed thirty days, unless the court, for good cause, orders a longer period of commitment not to exceed sixty days. Any defendant so committed may be given such care and treatment as is determined to be necessary by the psychiatric staff of such institution or facility. A full report of any such care and treatment shall be included in the report required under subsection (g). The superintendent or other person in charge of such institution or facility shall permit those psychiatrists or other experts appointed under this section to have reasonable access to the defendant.

(f) Copies of any reports, records, documents or information furnished by either party to the psychiatrist appointed pursuant to this section shall be given to the other party in the action. Any psychiatrist appointed pursuant to this section, or retained by either party, shall have the right to inspect and make copies of reports and records relating to the defendant in any facility or institution in which they are located. Compliance with this section may be required by an appropriate order of the court.

(g) Each psychiatrist appointed by the court who examines the defendant pursuant to this section shall file a written report with the clerk of the court who shall deliver copies to each party. The report of the examination shall include, but need not be limited to, the following:

(1) A description of the nature of the examination;

(2) The number of examinations and duration of each examination;

(3) The sources of information about the defendant;

(4) A diagnosis or description of the defendant's mental condition;

(5) An opinion as to the defendant's competency to be proceeded against, together with the reasons and basis for the opinion;

(6) If the defendant has been convicted, an opinion as to his competency to be sentenced, together with the reasons and basis for the opinion;

(7) If prior to conviction, an opinion as to whether or not the defendant was suffering from any mental illness, disease or defect at the time of the conduct alleged to have constituted the offense charged against the defendant and whether, as a result thereof, he lacked substantial capacity to know or understand what he was doing; or to know or understand that his conduct was wrongful or to control his actions or the extent to which, as a consequence of mental illness, disease or defect, the defendant did or did not have a state of mind or the capacity to have a state of mind relevant to any issue in the trial of the action;

(8) A report of the care and treatment received by defendant prior to the examination.

(h) Upon the trial, the psychiatrists appointed by the court may be called as witnesses by either party to the action or by the court and when so called, shall be subject to all legal objections as to competency and bias and as to qualification as an expert witness. When called by the court or by either party to the action, the court may examine the psychiatrist, but either party shall have the same right to object to questions asked by the court and the evidence adduced as though the psychiatrist were called by an adverse party. When the psychiatrist is called and examined by the court, the parties may cross-examine him in the order directed by the court. When called by either party to the action, any adverse party may examine him the same as in the case of any other witness.

(i) When any psychiatrist or other expert who has examined the defendant, whether or not appointed under this section, testifies concerning the defendant's mental condition, he shall be permitted to make a statement as to (1) the nature of his examination, (2) his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, (3) an opinion, if relevant, of the extent to which, the defendant, as a result of mental illness, disease or defect, was incapable of knowing or understanding what he was doing, or that he did not know and understand that his conduct was wrongful, or of the extent to which his capacity to control his actions was substantially impaired, (4) an opinion, if relevant, that the defendant did or did not have the state of mind or capacity to have the state of mind which is in issue during the trial, or (5) an opinion, if relevant, of the defendant's competency to be proceeded against or to be sentenced. The psychiatrist shall be permitted to make an explanation reasonably serving to clarify his diagnosis and opinion.

7.28. In any case in which evidence of mental illness, disease or defect has been introduced pursuant to the provisions of Section 7.19 and in which the defendant is acquitted, the court may order an evaluation of his condition and initiation of proceedings pursuant to the provisions of Article III (commencing with Section 49204) of Chapter III, Title XLVII of the Government Code.

7.31. Whenever a plea of not guilty by reason of mental illness, disease or defect is entered and the defendant is acquitted on that plea, the verdict or, if trial by jury has been waived, the finding of the court and the judgment shall so state.

7.34. (a) After entry of judgment of not guilty by reason of mental illness, disease or defect, the court shall, on the basis of the evidence given at the trial or at a separate hearing, make an order as follows:

(1) If the court finds that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others and is not in need of care, supervision or treatment, the court shall order him discharged from custody.

(2) If the court finds that the person is affected by mental illness, disease or defect and that he presents a substantial danger to himself or the person or property of others, but he can be controlled adequately and given proper care, supervision and treatment if he is released on supervision, the court shall order him released subject to

such supervisory orders of the court, including supervision by the probation department, as are appropriate in the interests of justice and the welfare of the defendant. Conditions of release in such orders may be modified from time to time and supervision may be terminated by order of the court as provided in subsection (b).

(3) If the court finds that the person presents a substantial risk of danger to himself or the person or property of others and that he is not a proper subject for release on supervision, the court shall order him committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment.

(b) At any time within five years of the original entry of the order of release on supervision made pursuant to paragraph (2) of subsection (a), the court shall, upon motion of either the prosecution or such person, or upon its own motion, and after notice to the prosecution and such person, conduct a hearing to determine if, or to what extent, the person remains affected by mental illness, disease or defect. If the court determines that the person remains affected by mental illness, disease or defect, the court may release him on further supervision, as provided in subsection (a), but for not longer than five years from the original entry of the order of release on supervision, or if the court determines that the person is affected by mental illness, disease or defect and presents a substantial danger to himself or to the person or property of others and cannot adequately be controlled if released on supervision, it may make an order committing the person to the Administrator of the Guam Memorial Hospital for custody, care and treatment. If the court determines that the person has recovered from his mental illness, disease or defect or, if affected by mental illness, disease or defect, no longer presents a substantial danger to himself or the person or property of others and no longer requires supervision, care or treatment, the court shall order him discharged from custody.

(c) if, after at least ninety days from the commitment of any person to the custody of the Administrator, the Administrator is of the opinion that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others, the Administrator may apply to the court which committed the person for an order of discharge. The application shall be accompanied by a report setting forth the facts supporting the opinion of the Administrator. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.

(d) Any person who has been committed to the Administrator for custody, care and treatment, after the expiration of ninety days from the date of the order of commitment, may apply to the court by which he was committed for an order of discharge upon the grounds that he is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.

(e) The court shall conduct a hearing upon any application for release or modification filed pursuant to subsections (c) and (d). If the court finds that the person is no longer suffering from mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others, the court shall order him discharged from custody or from supervision. If the court finds that the person would not be a substantial danger to himself or to the person or property of others, and can be controlled adequately if he is released on supervision, the court shall order him released as provided in paragraph (2) of subsection (a). If the court finds that the person has not recovered from his mental illness, disease or defect and cannot adequately be controlled if he is released on supervision, the court shall order him remanded for care and treatment.

In any hearing under this subsection, the court may appoint one or more qualified psychiatrists or other qualified persons to examine the person and to submit reports to the court.

Reports filed with the court pursuant to such appointment shall include, but need not be limited to, an opinion as to the mental condition of the person and whether the person presents a substantial danger to himself or the person or property of others. To facilitate the expert's examination of the person, the court may order him placed in the temporary custody of any suitable facility.

(f) Any person who, pursuant to to this section, has been in the custody of the Administrator of the Guam Memorial Hospital or on release on supervision by the court for a period in excess of five years shall, in any event, be discharged if he does not present a substantial danger to the person of others.

7.37. A person can neither be proceeded against nor sentenced after conviction while he is incompetent as defined in this section:

(a) A defendant is incompetent to be proceeded against in a criminal action if, as a result of mental illness, disease or defect, he is unable (1) to understand the nature of the proceedings, (2) to assist and cooperate with his counsel, (3) to follow the evidence, or (4) to participate in his defense.

(b) A defendant is incompetent to be sentenced if, as a result of mental illness, disease or defect, he is unable (1) to understand the nature of the proceedings, (2) to understand the charge of which he has been convicted, (3) to understand the nature and extent of the sentence imposed upon him, or (4) to assist and cooperate with his counsel.

7.40. (a) At any time before the commencement of the trial either party may make a motion for a hearing on the defendant's competency to be proceeded against, or the court on its own motion may order such a hearing. Thereupon, the court shall suspend all proceedings in the criminal prosecution and proceed as provided in Section 7.25.

(b) At any time after the commencement of the trial, but before sentence, if it appears on the motion of either party or the court's own motion that there is reasonable cause to believe the defendant is incompetent to be proceeded against or sentenced, the court shall suspend all proceedings in the criminal prosecution and proceed as provided in Section 7.25. The trial jury in the criminal prosecution may be discharged or retained at the discretion of the court until the defendant's competency is determined. The dismissal of the trial jury shall not be a bar to further prosecution.

(c) If the court for any reason once proceeds under Section 7.25, then upon a second or subsequent notice or plea under Section 7.22, or upon a second or subsequent motion under this section, the court does not have to suspend the proceedings in the criminal prosecution and again proceed as provided in Section 7.25, except upon a showing of good cause or changed conditions.

7.43. (a) If at least one psychiatrist concludes in his report filed pursuant to Section 7.25 that the defendant may be incompetent to be proceeded against or to be sentenced, the court shall order the issue of his competency to be determined within ten days after the filing of the reports pursuant to Section 7.25, unless the court, for good cause, orders the issue tried at a later date.

(b) Any hearing under this section shall be by the court without a jury.

(c) If the court finds that the defendant is competent to be proceeded against or to be sentenced, the proceedings shall be resumed, or judgment be pronounced.

(d) If the court finds that the defendant is incompetent to be proceeded against or sentenced but that there is a substantial likelihood that he will regain his competency in the foreseeable future, the court shall order him committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment and shall require the Administrator to furnish the court with reports on the defendant's progress at least once every six months.

(e) Whenever, in the opinion of the Administrator or any officer designated in writing by him, the defendant regains his competency, the Administrator or such officer shall, in writing, certify that fact to the clerk of the court in which the proceedings are pending. Such certification, unless contested by the defendant or the people, shall be sufficient to authorize the court to find the defendant competent and to order the criminal prosecution to continue. If the certification is contested, a hearing before the court shall be held, after notice to the parties, and the party so contesting shall have the burden of proving by a preponderance of the evidence that the defendant remains incompetent.

Upon a finding of competency, the defendant may apply for his release pending trial in the manner provided by Chapter 40 (commencing with Section 40.10) of the Criminal Procedure Code.

Upon written request by the court or either party, filed with the clerk of the court and served upon the superintendent of the institution in which the defendant is or was confined, the superintendant shall file with the clerk of the court the defendant's complete medical records, or such portion thereof as is designated in the request, or a certified copy thereof, while at said institution.

(f) If at any time the court determines that the defendant is incompetent and that there is no substantial likelihood that he will regain his competency in the forseeable future, the court, upon its own motion, or upon motion of either party, and after reasonable notice to the other party and an opportunity to be heard, shall dismiss the pending indictment, information, or other criminal charges and order the defendant to be released or order the commencement of any available civil commitment proceedings.

(g) A finding or certificate that the defendant is mentally competent shall in no way prejudice the defendant in his defense on the plea under Section 7.22 or in his defense under Section 7.19. Such finding or certificate shall not be introduced in evidence on such issues or otherwise brought to the notice of the jury.

(h) The proceedings under this section shall be part of the criminal proceedings and included in the file of that case.

(i) Any period for which the defendant is committed pursuant to this section shall be credited against any sentence which may later be imposed on him for the offense with which he is charged.

7.48. The commitment of the defendant pursuant to Section 7.43 exonerates any depositor or surety who has provided security pursuant to Chapter 40 (commencing with Section 40.10) of the Criminal Procedure Code and entitles such person to the return of any money or property he may have deposited.

7.49. If at any time after the imposition of sentence and during the period a person is in the custody of the Director of Corrections or is subject to a sentence of probation or parole the Director of Correction has reasonable cause to believe that the person may as a result of mental illness, disease or defect, present a substantial danger to himself or the person or property of others, the director shall so report to the Attorney General who shall file a motion for a judicial determination whether such person should be committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment. A similar motion may be made upon behalf of such person. The motion and the determination shall be made in the manner provided by Sections 7.25, 7.40 and 7.43. If the court finds that the person as a result of mental illness, disease or defect, presents a substantial danger to himself or the person or property of others, the court shall order him to be committed to the custody of the Administrator of the Guam Memorial Hospital. Time spent in such detention shall be counted towards any sentence of confinement previously imposed. Either the Administrator or the person committed may apply for discharge in the manner provided by subsections (c) and (d) of Section 7.34. The court shall conduct a hearing on such application in the manner provided by subsection (e) of Section 7.34 and make such order releasing the person or returning him to probation, parole or custody of the Director of Corrections as may be required.

7.52. Nothing in this article shall be construed to hinder or to prevent the transfer of any person committed pursuant to this article to any hospital outside of Guam, for care and treatment. An application for transfer may be made by either the Administrator of the Guam Memorial Hospital or by or on behalf of the person committed. The application shall be made to the court which committed such person. A transfer may be made only upon court order after such notice to the Attorney General as the court shall require.

Article 3. Defenses

7.55. (a) A person's ignorance or mistake as to a matter of fact or law is a defense if it negatives the culpable mental state required for the offense or establishes a mental state sufficient under the law to constitute a defense.

(b) A person's belief that his conduct does not constitute a crime is a defense only if it is reasonable and,

(1) if the person's mistaken belief is due to his ignorance of the existence of the law defining the crime, he exercised all the care which, in the circumstances, a law-abiding and prudent person would exercise to ascertain the law; or

(2) if the person's mistaken belief is due to his misconception of the meaning or application of the law defining the crime to his conduct,

(A) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in a statute, judicial decision, administrative order or grant of permission, or an official interpretation of the public officer or body charged by law with the responsibility for interpreting, administering or enforcing the law defining the crime; or,

(B) he otherwise diligently pursues all means available to ascertain the meaning and application of the crime to his conduct and honestly and in good faith concludes his conduct is not a crime in circumstances in which a law-abiding and prudent person would also so conclude.

(c) The defendant must prove a defense arising under subsection (b) by a preponderance of the evidence.

7.58. (a) As used in this section:

(1) "intoxication" means an impairment of mental or physical capacities resulting from the introduction of alcohol, drugs, or other substances into the body.

(2) "self-induced intoxication" means intoxication caused by substances which the person knowingly introduce into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would otherwise afford a defense to a charge of crime

(b) Except as provided in subsection (d), intoxication is not a defense to a criminal charge. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.

(c) A person is reckless with respect to an element of the offense, even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.

(d) Intoxication which is not self-induced is an affirmative defense if, by reason of such intoxication, the person at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of the law.

7.61 (a) In a prosecution for any offense it is an affirmative defense that the defendant engaged in the conduct otherwise constituting the offense:

(1) because he was coerced into doing so by the threatened use of unlawful force against his person or the person of another in circumstances where a person of reasonable firmness in his situation would not have done otherwise; or

(2) in order to avoid death or great bodily harm to himself or another in circumstances where a person of reasonable firmness in his situation would not have done otherwise.

(b) The defenses defined in this section are not available if the offense is murder nor to a person who placed himself intentionally, knowingly or recklessly in a situation in which it was probable that he would be subjected to duress or compulsion.

7.64. (a) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) When conduct is an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

(1) neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;

(2) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

(3) the conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury have been made aware of the risks involved prior to giving consent.

(c) Assent does not constitute consent, within the meaning of this section, if:

(1) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the defendant;

(2) it is given by a person who by reason of intoxication as defined in Section 7.58, mental illness or defect, or youth, is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(3) it is induced by force, duress or deception.

7.67. The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

(a) was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;

(b) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(c) presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense. The court shall not dismiss a prosecution under this subsection without filing a written statement of its reasons.

7.70 (a) It is an affirmative defense that the defendant committed the offense in response to an entrapment, except as provided in subsection (c).

(b) Entrapment occurs when a law enforcement agent, for the purpose of obtaining evidence of the commission of an offense, induces or encourages a person to engage in prescribed conduct, using such methods of inducement as create a substantial risk that the offense would be committed by persons other than those who are ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(c) The defense afforded by this section is unavailable when causing or threatening serious bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(d) As used in this section, "law enforcement agent" includes personnel of federal and territorial law enforcement agencies, and any person cooperating with such an agency.

(e) The issue of entrapment shall be tried by the court in the absence of the jury.

7.73. (a) In a prosecution for an attempt, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

(b) In a prosecution for criminal facilitation, it is an affirmative defense that, prior to the commission of the crime which he facilitated, the defendant made a reasonable effort to prevent the commission of such crime.

(c) In a prosecution for criminal solicitation, or for conspiracy, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the criminal or otherwise unlawful conduct contemplated by the conspiracy, as the case may be.

(d) A renuciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim or another but similar objective.

Article 4. Justification

7.76. "Deadly force" means force which a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Intentionally firing a firearm in the direction of another person or at a moving vehicle constitutes deadly force. A threat to cause death or serious bodily injury does not constitute deadly force, so long as the defendant's intent is limited to creating an apprehension that he will use deadly force if necessary.

7.78. (a) In a prosecution for an offense, justification as defined in this article is a defense.

(b) The fact that conduct is justifiable under this article does not abolish or impair any remedy for such conduct which is available in any civil action.

7.80. A person is justified in conduct which would otherwise constitute an offense when such conduct is immediately necessary to avoid an imminent public disaster or serious bodily injury to a person or serious damage to property which is about to occur through no fault of the defendant, and the harm which might reasonably be expected to result from such conduct is less than the harm which the defendant seeks to prevent.

7.82. (a) Except as otherwise provided in subsection (b), conduct is justifiable when it is required or authorized by:

(1) the law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his duties;

(2) the law governing the execution of legal process;

(3) the judgment or order of a competent court;

(4) the law governing the armed services or the lawful conduct of war; or

(5) any other provision of law imposing a public duty.

(b) The other sections of this article apply to:

(1) the use of force upon or toward the person of another for any of the purposes dealt with in such sections; and

(2) the use of deadly force for any purpose, unless the use of such force is otherwise expressly authorized by law or occurs in the lawful conduct of war.

(c) The justification afforded by subsection (a) applies:

(1) when the defendant believes his conduct to be required or authorized by the judgment or direction of a competent court or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and

(2) when the defendant believes his conduct to be required or authorized to assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority.

7.84. Except as otherwise provided by Sections 7.86 and 7.96, the use of force upon or toward another person is justifiable when the defendant believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

7.86. (a) The use of force is not justifiable under Section 7.84:

(1) to resist an arrest which the defendant knows is being made by a peace officer in the performance of his duties, although the arrest is unlawful; or

(2) to resist force used by the occupier or possess of property or by another person on his behalf, where the defendant knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(A) the defendant is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest;

(B) the defendant has been unlawfully dispossessed of the property and is making a re-entry or recaption justified by Section 7.90, or

(C) the defendant believes that such force is necessary to protect himself against death or serious bodily harm.

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

(1) the defendant, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or

(2) the defendant knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:

(A) the defendant is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the defendant knows it to be; and

(B) a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

(c) Except as otherwise required by subsections (a) and (b), a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.

7.88. (a) Except as otherwise provided by this section and Section 7.96, the use of force upon or toward the person of another is justifiable to protect a third person when:

(1) the defendant would be justified under Section 7.84 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect;

(2) under the circumstances as the defendant believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(3) the defendant believes that his intervention is necessary for the protection of such other person.

(b) Notwithstanding subsection (a),

(1) when the defendant would be obliged under paragraph (2) of subsection (b) of Section 7.86 to retreat or take other action, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person;

(2) when the person whom the defendant seeks to protect would be obliged under paragraph (2) of subsection (b) of Section 7.86 to retreat or take similar action if he knew that he could obtain complete safety by so doing the defendant is obliged to try to cause him to do so before using force in his protection if the defendant knows that he can obtain complete safety in that way; and

(3) neither the defendant nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in his own.

7.90. (a) Except as otherwise provided by this section and Section 7.96, the use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary:

(1) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property, provided that such land or movable property is, or is believed by the defendant to be, in his possession or in the possession of another person for whose protection he acts; or

(2) to effect an entry or re-entry upon land or to retake tangible movable property, provided that the defendant believes that he or the person by those authority he acts is entitled to possession, and the force is used immediately or on fresh pursuit after such dispossession.

(b) For the purposes of subsection (a):

(1) a person who has parted with the custody of property to another who refuses to restore it to him is no longer in possession, unless the property is movable and was and still is located on land in this possession;

(2) a person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim of right.

(c) The use of force is justifiable under this section only if the defendant first requests the person against whom such force is used to desist from his interference with the property, unless the defendant believes that:

(1) such request would be useless;

(2) it would be dangerous to himself or another person to make the request; or

(3) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

(d) The use of force to prevent or terminate a trespass is not justifiable under this section if the defendant knows that the exclusion of the trespasser will expose the trespasser to substantial danger of serious bodily harm.

(e) The use of force to prevent an entry or re-entry upon land or the recaption of movable property is not justifiable under this section, although the defendant believes that such re-entry or recaption is unlawful, if:

(1) the re-entry or recaption is made by or on behalf of a person who was actually dispossessed of the property; and

(2) it is otherwise justifiable under paragraph (2) of subsection (a).

(f) The use of deadly force is not justifiable under this section unless the defendant believes that:

(1) the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or

(2) the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:

(3) the defendant believes that his intervention is necessary for the protection of such other person.

(b) Notwithstanding subsection (a),

(1) when the defendant would be obliged under paragraph (2) of subsection (b) of Section 7.86 to retreat or take other action, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person;

(2) when the person whom the defendant seeks to protect would be obliged under paragraph (2) of subsection (b) of Section 7.86 to retreat or take similar action if he knew that he could obtain complete safety by so doing the defendant is obliged to try to cause him to do so before using force in his protection if the defendant knows that he can obtain complete safety in that way; and

(3) neither the defendant nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in his own.

7.90. (a) Except as otherwise provided by this section and Section 7.96, the use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary:

(1) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property, provided that such land or movable property is, or is believed by the defendant to be, in his possession or in the possession of another person for whose protection he acts; or

(2) to effect an entry or re-entry upon land or to retake tangible movable property, provided that the defendant believes that he or the person by those authority he acts is entitled to possession, and the force is used immediately or on fresh pursuit after such dispossession.

(b) For the purposes of subsection (a):

(1) a person who has parted with the custody of property to another who refuses to restore it to him is no longer in possession, unless the property is movable and was and still is located on land in this possession;

(2) a person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim of right.

(c) The use of force is justifiable under this section only if the defendant first requests the person against whom such force is used to desist from his interference with the property, unless the defendant believes that:

(1) such request would be useless;

(2) it would be dangerous to himself or another person to make the request; or

(3) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

(d) The use of force to prevent or terminate a trespass is not justifiable under this section if the defendant knows that the exclusion of the trespasser will expose the trespasser to substantial danger of serious bodily harm.

(e) The use of force to prevent an entry or re-entry upon land or the recaption of movable property is not justifiable under this section, although the defendant believes that such re-entry or recaption is unlawful, if:

(1) the re-entry or recaption is made by or on behalf of a person who was actually dispossessed of the property; and

(2) it is otherwise justifiable under paragraph (2) of subsection (a).

(f) The use of deadly force is not justifiable under this section unless the defendant believes that:

(1) the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or

(2) the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:

(A) has employed or threatened deadly force against or in the presence of the defendant; or

(B) the use of force other than deadly force to prevent the commission or the consummation of the crime would expose the defendant or another in his presence to substantial danger of serious bodily harm.

7.92. (a) Except as otherwise provided by this section and Section 7.96, the use of force upon or toward the person of another is justifiable when the defendant is making or assisting in making an arrest and the defendant believes that such force is immediately necessary to effect a lawful arrest.

(b) The use of force is not justifiable under this section unless:

(1) the defendant makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(2) when the arrest is made under a warrant, the warrant is valid or believed the defendant to be valid.

(c) The use of deadly force is not justifiable under this section unless:

(1) the arrest is for a felony;

(2) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer;

(3) the defendant believes that the force employed creates no substantial risk of injury to innocent persons; and

(4) the defendant believes that:

(A) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(B) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force would justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

(e) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful.

(f) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that (1) he believes that the arrest is lawful, and (2) the arrest would be lawful if the facts were as he believes them to be.

(g) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

(1) any limitations imposed by the other provisions of this article on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(2) the use of deadly force is not in any event justifiable under this subsection unless:

(A) the defendant believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

(B) the defendant believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.

7.94. The use of force upon another person is justified under any of the following circumstances:

(a) a parent, guardian or other person responsible for the care and supervision of a minor less than eighteen years of age, or a person acting at the direction of such person, may use necessary force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct. The force used for this purpose must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;

(b) a teacher or a person otherwise responsible for the care and supervision of a minor less than eighteen years of age for a special purpose, or a person acting at the direction of such person, may use necessary force upon any such minor who is disruptive or disorderly for the purpose of maintaining order, restraining that minor or removing him from the place of disturbance. The force used for these purposes must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;

(c) a guardian or other person responsible for the care and supervision of an incompetent person or a person acting at the direction of the guardian or responsible person, may use necessary force upon the incompetent person for the purpose of safeguarding or promoting his welfare, including the prevention of his misconduct or, when he is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution. The force used for these purposes must not be intended to cause or known to create a substantial risk of causing extreme pain or gross degradation;

(d) a person responsible for the maintenance of order in a vehicle, vessel, aircraft, or other carrier, or in a place where others are assembled, or a person acting at the responsible person's direction, may use necessary force to maintain order;

(e) a duly licensed physician, or a person acting at his direction, may use necessary force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered: (1) with the consent of the patient or if the patient is a minor less than sixteen years of age or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision; or (2) in an emergency, if the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.

7.96. (a) The justification afforded by Section 7.84 to 7.92, inclusive, is unavailable when:

(1) the defendant's belief in the unlawfulness or of the force or conduct against which he employs protective force or his belief in the unlawfulness of an arrest which he endeavors to effect by force is eroneous; and

(2) his error is due to ignorance or mistake as to the provisions of this code, any other provision of the criminal law or the law governing the legality of an arrest or search.

(b) When the defendant believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under Section 7.82 to 7.94 but the defendant is reckless or negligent in having such belief which is material to the justifiability of his use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

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

7.98. Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense of privilege in a civil action based thereon, unless:

(a) the code or the law defining the offense deal with the specific situation involved; or

(b) a legislative purpose to exclude the justification claimed otherwise plainly appears.

CHAPTER 13, ATTEMPT, SOLICITATION, CONSPIRACY

13.10. A person is guilty of an attempt to commit a crime when, with intent to engage in conduct which would constitute such crime were the circumstances as he believes them to be, he performs or omits to perform an act which constitutes a substantial step toward commission of the crime.

13.15. In a prosecution for an attempt, it is no defense that it was impossible to commit the crime.

13.20. A person is guilty of solicitation to commit a felony when with intent to promote or facilitate its commission he commands, encourages or requests another person to perform or omit to perform an act which constitutes such crime or an attempt to commit such crime or would establish his complicity in its commission or attempted commission.

13.25. (a) In any prosecution for solicitation, it is a defense that if the criminal object was achieved, the defendant would not be guilty of a crime under the law defining the crime or as an accomplice under subsection (a) of Section 4.75.

(b) In any prosecution for solicitation, it is no defense that:

(1) the person solicited would not be guilty of the crime which was the object of the solicitation because of his lack of criminal responsibility or other legal incapacity; or

(2) the crime can be committed only by a particular class of persons to which either the solicitor or the person solicited does not belong.

13.30. A person is guilty of conspiracy to commit a crime if:

(a) he agrees with one or more other persons that he or one of them will engage in conduct which constitutes such crime;

(b) he does so with the intention of engaging in, promoting or assisting in the conduct which constitutes such crime; and

(c) he or one of them performs an overt act in pursuance of the agreement.

13.35. If a person conspires to commit a number of crimes, he may be convicted of only one conspiracy so long as those multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

13.40. If a person is guilty of conspiring with one co-conspirator to commit a crime and knows or contemplates that his co-conspirator has conspired or may conspire with another to commit the same crime, he is guilty of conspiring with any such other person to commit that crime, whether or not he knows of his identity.

13.45. (a) In any prosecution for consipiracy, it is a defense that if the criminal object was achieved, the defendant would not be guilty of a crime under the law defining the crime or as an accomplice under subsection (a) of Section 4.75.

(b) In any prosecution for conspiracy, it is no defense that:

(1) a co-conspirator would not be guilty of conspiracy or the crime which was its object because of his lack of criminal responsibility or other legal incapacity, or because of his lack of culpability required for the crime;

(2) the crime can be committed only by a particular class of persons to which either the defendant or a co-conspirator does not belong;

(3) a co-conspirator has legal immunity from prosecution, or has not been prosecuted for or convicted of the conspiracy or a crime based upon the conduct in question, or has previously been acquitted; or

(4) the agreement of a purported co-conspirator was feigned.

13.50. For purposes of Section 10.60 of the Criminal Procedure Code:

(a) A conspiracy terminates when the crime or crimes which are its object is or are committed or the agreement is abandoned by the defendant and his co-conspirators.

(b) If a defendant abandons the agreement, the conspiracy is terminated as to him only when he advises those with whom he conspired of his abandonment or informs the law enforcement authorities of the existence of the conspiracy and his participation.

13.60. (a) Except as otherwise provided in this section attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious crime which is attempted or solicited or is an object of the conspiracy.

(b) Attempted murder, and solicitation and conspiracy to commit murder are felonies of the first degree.

(c) A conspiracy to commit a misdemeanor involving danger to the person or to commit a series or number of misdemeanors pursuant to a common scheme or plan is a felony of the third degree.

CHAPTER 16. CRIMINAL HOMICIDE

16.10. As used in this chapter,

(a) "human being" means a person who has been born and is alive;

(b) "bodily injury" means physical pain, illness, unconsciousness, or any impairment of physical condition;

(c) "serious bodily injury" means bodily injury which creates; serious permanent disfigurement; a substantial risk of death or serious, permanent disfigurement; severe or intense physical pain; or protracted loss or impairment of consciousness or of the function of any bodily member or organ;

(d) "deadly weapon" means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to the defendant to be capable of producing death or serious bodily injury.

16.20. (a) A person is guilty of criminal homicide if he is intentionally, knowingly, recklessly or by criminal negligence causes the death of another human being.

(b) Criminal homicide is murder, manslaughter or negligent homicide.

16.30. (a) Except as provided in Section 16.40, criminal homicide constitutes murder when:

(1) it is committed intentionally or knowingly; or

(2) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life

(b) Murder is a felony of the first degree but a person convicted of murder may be sentenced to life imprisonment notwithstanding any other provision of law.

16.40. (a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly, or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonables of such explanation or excuse by a preponderance of the evidence.

(b) Manslaughter is a felony of the second degree.

16.50. (a) Criminal homicide constitutes negligent homicide when it is committed by criminal negligence.

(b) Negligent homicide is a felony of the third degree.

CHAPTER 19. ASSAULT, RECKLESS ENDANGERING, TERRORIZING

19.10. As used in this chapter, the terms "bodily injury," "serious bodily injury," and "deadly weapon" have the meanings provided by Section 16.10.

19.20. (a) A person is guilty of aggravated assault if he either recklessly causes or attempts to cause:

(1) serious bodily injury to another in circumstances manifesting extreme indifference to the value of human life;

(2) serious bodily injury to another; or

(3) bodily injury to another with a deadly weapon.

(b) Aggravated assault under paragraph (1) of subsection (a) is a felony of the second degree; aggravated assault under paragraph (2) or (3) of subsection (a) is a felony of the third degree.

19.30. (a) A person is guilty of assault if he;

(1) either recklessly causes or attempts to cause bodily injury to another;

(2) recklessly uses a deadly weapon in such a manner as to place another in danger of bodily injury; or

(3) by physical menace intentionally puts or attempts to put another in fear of imminent bodily injury.

(b) Assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

19.40. (a) A person is guilty of reckless conduct if he:

(1) recklessly engages in conduct which unjustifiably places or may place another in danger of death or serious bodily injury;

(2) intentionally points a firearm at or in the direction of another, whether or not the defendant believes it to be loaded.

(b) Reckless conduct is a misdemeanor.

19.50. (a) A person is guilty of terroristic conduct if he threatens to commit any crime of violence with intent to cause evacuation of building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such inconvenience.

(b) Terroristic conduct is a felony of the third degree.

CHAPTER 22. KIDNAPPING AND RELATED OFFENSES

22.10. As used in this chapter, the terms "bodily injury" and "serious bodily injury" have the meanings provided by Section 16.10.

22.20. (a) A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period, with any of the following purposes:

(1) to hold for ransom or reward;

(2) to facilitate commission of any felony or flight thereafter;

(3) to inflict bodily injury on or to terrorize the victim or another; or

(4) to interfere with the performance of any governmental or political function.

(b) Kidnapping is a felony of the first degree unless the defendant voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree.

(c) A removal or confinement is unlawful within the meaning of this section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 or incompetent, or it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

22.30. A person commits a felony of the third degree if he knowingly:

(a) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or

(b) holds another in a condition of involuntary servitude.

22.40. (a) A person is guilty of child stealing when he takes or keeps a child who is less than fourteen years old and who is not his natural or adopted child with intent to conceal that child from his parent, legal guardian, or other person having that child in his care or custody or under his control.

(b) This section shall not apply to a relative of a child who believes that taking or keeping that child is necessary to protect him from physical or emotional harm.

(c) Child stealing is a felony of the third degree.

22.50. (a) A person is guilty of harboring a child when he takes or keeps a child with intent to conceal him from his parent, legal guardian, or other person having that child in his care or custody or under his control; and

(1) he is not a parent of that child; and

(2) being a parent of that child, and with knowledge of a court order relating to the custody of that child, his conduct is in violation of that order.

(b) As used in this section, "child" includes a natural or adopted child.

(c) Harboring a child is a misdemeanor when the defendant takes the child from the Territory. Otherwise, it is a petty misdemeanor.

22.60. (a) A person is guilty of criminal intimidation if he knowingly compels or induces another to do an act which the latter has a legal privilege not to do or to refrain from doing an act which the latter has a legal privilege to do by threatening to

(1) commit any criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(4) take or withhold action as an official or to cause an official to take or withhold action.

(b) Criminal intimidation is a misdemeanor.

CHAPTER 25. SEXUAL OFFENSES

25.10. (a) As used in this chapter,

(1) "serious bodily injury" has the meaning provided by subsection (c) of Section 16.10.

(2) "sexual intercourse" has its ordinary meaning and occurs upon penetration, however slight.

(3) "deviate sexual intercourse" means sexual conduct consisting of contact between the penis and the anus, or the mouth or tongue and the penis, the scrotum, the anus, or the vulva.

(4) "sexual contact" means any touching of the sexual or other intimate parts of a person, or any such touching through the clothing, for the purpose of arousing or gratifying the sexual desire of any person.

(b) Whenever in this chapter the criminality of conduct depends on a child's being below the age of fourteen, it is no defense that the defendant reasonably believed the child to be fourteen or older. Whenever in this chapter the criminality of conduct depends on a child's being below a specified age older than fourteen it is an affirmative defense that the defendant reasonably believed the child to be of that age or above.

(c) Whenever in this chapter the definition of an offense excludes conduct with a spouse, the exclusion shall extend to persons over the age of eighteen living together in a state of cohabitation, regardless of the legal status of their relationship, but shall not extend to spouses living apart under a judicial decree of separation.

25.15. (a) A male who has sexual intercourse with a female not his wife is guilty of aggravated rape if:

(1) he compels her to submit by force or by threat of imminent death, serious bodily injury or kidnapping, to be inflicted on her or on any other person; or

(2) the female is less than fourteen years old.

(b) Aggravated rape is a felony of the first degree if in the course thereof the defendant inflicts serious bodily injury on his victim or if his conduct violates both paragraphs (1) and (2) of subsection (a). Otherwise, aggravated rape is a felony of the second degree.

25.20. (a) A male who has sexual intercourse with a female not his wife commits rape if:

(1) he knows the female is unconscious;

(2) he has substantially impaired her power to appraise or control her conduct by administering without her knowledge drugs or similar means for the purpose of preventing resistance;

(3) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct.

(4) he knows that she is unaware of the sexual nature of the act being committed upon her; or

(5) he compels her to submit by any threat that he knows would be likely to prevent resistance by a woman of ordinary resolution.

(b) Rape is a felony of the third degree.

25.25. (a) A person who has deviate sexual intercourse with another person, whether of the same or the opposite sex, not his spouse, commits aggravated sodomy if:

(1) he compels the other person to submit by force or by threat of imminent death, serious bodily injury, or kidnapping to be inflicted on him or on any other person; or

(2) the other person is less than fourteen years old.

(b) Aggravated sodomy is a felony of the first degree if in the course thereof the defendant inflicts serious bodily injury on his victim or if his conduct violates both paragraphs (1) and (2) of subsection (a). Otherwise, aggravated sodomy is a felony of the second degree.

25.30. (a) A person who has deviate sexual intercourse with another person whether of the same or the opposite sex, not his spouse, commits sodomy if:

25.35. A male who has sexual intercourse with a female not his wife or any person who engages in deviate sexual intercourse with a person, whether of the same or the opposite sex, not his spouse is guilty of a felony of the third degree if the other person is less than eighteen years old and the defendant is not less than three years older than the other person.

25.40. A male who has sexual intercourse with a female not his wife or any person who engages in deviate sexual intercourse with a person, whether of the same or the opposite sex, not his spouse is guilty of a felony of the third degree if the other person is in custody of law or detained by authority of law in a hospital or other institution and the defendant has supervisory or disciplinary authority over him.

25.45. A person who intentionally subjects another person, whether of the same or the opposite sex, not his spouse to any sexual contact is guilty of sexual misconduct if:

(a) the other person does not consent to the contact;

(b) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of the contact involved;

(c) he knows that the other person is unaware that a sexual act is being committed;

(d) he has substantially impaired the other person's power to appraise or control his conduct by administering without his knowledge drugs or similar means to prevent resistance;

(e) the other person is less than fourteen years old

(f) the other person is less than eighteen years old and the defendant is not less than three years older than the other person; or

(g) the other person is in custody of law or detained by authority of law in a hospital or other institution and the defendant has supervisory or disciplinary authority over him.

25.50. (a) Sexual misconduct is a felony of the second degree if:

(1) the victim is less than fourteen years old and the defendant compels the victim to submit by force or by threat of imminent death, serious bodily injury or kidnapping, to be inflicted on anyone; or

(2) in the course thereof the defendant inflicts serious bodily injury on his victim.

(b) Sexual misconduct is a felony of third degree if:

(1) the victim is less than fourteen years old; or

(2) the defendant compels the victim to submit by force or by threat of imminent death, serious bodily injury or kidnapping, to be inflicted on anyone.

(c) Sexual misconduct is otherwise a misdemeanor.

CHAPTER 28. PUBLIC INDECENCY

Article 1. Prostitution

28.10. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in sexual intercourse or deviate sexual intercourse in return for a pecuniary benefit. As used in this section, the terms "sexual intercourse" and "deviate sexual intercourse" have the meanings provided by Section 25.10.

28.15. Any person who, on a street or in any other place to which the public or a substantial group has access, or within view of any of these places, solicits another person to engage in or offers to engage in prostitution, is guilty of a petty misdemeanor.

28.20. (a) A person is guilty of promoting prostitution who:

(1) owns, controls, manages, supervises or otherwise keeps, along or in association with others, a place of prostitution or a prostitution enterprise; or

(2) knowingly solicits, induces or causes a person to commit or engage in prostitution with others or to reside in or occupy a place of prostitution.

(b) Promoting prostitution is a felony of the third degree.

28.25. (a) A person is guilty of abetting prostitution who:

(1) solicits a person to patronize a prostitute;

(2) procures a prostitute for a patron;

(3) knowingly and for the purpose of prostitution, transports any person into, out of or within the territory, or who procures or pays for the transportation of any person into, out of or within the territory for the purpose of prostitution; or

(4) knowingly permits prostitution in any premises under his possession or control or fails to make reasonable effort to halt or abate such use.

(b) Abetting prostitution is a misdemeanor.

28.30. (a) A person is guilty of compelling prostitution who:

(1) by force, threat or duress compels another to engage in prostitution;

(2) causes or aids a person under the age of eighteen to commit or engage in prostitution; or

(3) causes or aids his wife, child or any person whose care, protection or support he is responsible for, to commit or engage in prostitution.

(b) Compelling prostitution is a felony of the third degree.

28.35. On the issue whether a premise is a place of prostitution, its general repute and the repute of the persons who reside in or frequent the place shall be admissible evidence.

Article 2. Obscenity and Related Offenses

28.40. As used in this article,

(a) "material" means anything printed or written, or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. "Material" includes undeveloped photographs, molds, printing plates and other latent representational objects.

(b) "prurient interest" means a shameful or morbid interest in nudity, sex, or excretion.

(c) "performance" means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomining.

(d) "distribute" means to transfer possession of material, whether with or without consideration.

28.45. (a) Any material or performance is obscene if considered as a whole, applying contemporary community standards:

(1) its predominant appeal is to prurient interest;

(2) it goes substantially beyond customary limits of candor in the description or representation of nudity, sex or excretion; and

(3) it is utterly without redeeming social importance

(b) In a prosecution under this article, the question whether the predominant appeal of material or of a performance is to prurient interest shall be determined with reference to average adults, unless it appears from the nature of the material or performance, or from the circumstances of its dissemination, distribution, or exhibition, that it is designed for a clearly defined deviant sexual group or for children, in which case the question of predominant appeal shall be determined with reference to the intended recipient group.

(c) When circumstances of production, sale, dissemination, distribution, or publicity indicate that material or a performance is being exploited by the defendant for the sake of its prurient appeal, evidence of such circumstances is admissible in a prosecution under this article upon the question whether the material or performance is utterly without redeeming social importance.

(d) Neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the obscene character of the material or performance which is the subject of a prosecution under this article.

28.50. A person is guilty of a misdemeanor if he knowingly or recklessly:

(a) sends or brings any obscene material into this territory for sale or distribution;

(b) prepares, publishes, prints, exhibits, distributes or offers to distribute any obscene material;

(c) possesses any obscene material with intent to distribute it in violation of this article;

(d) sells, advertises or disseminates material, whether or not obscene, by advertising, representing or suggesting that it is obscene;

(e) presents or directs an obscene performance or participates in that portion thereof which makes it obscene; or

(f) distributes or sends to, or exhibits or offers to distribute any obscene material to a minor under the age of eighteen years;

(g) employs or uses a minor under the age of eighteen years to do or assist in doing any of the acts described in this section; or

(h) performs an obscene act or otherwise presents an obscene exhibition of his body in a public place.

28.55. It is an affirmative defense in any prosecution under Section 28.50 that dissemination or distribution of material:

(a) was not for compensation and was made privately to personal associates other than children under eighteen years of age;

(b) was to institutions or individuals having legitimate scientific or educational justification for possessing obscene material;

(c) was by any parent or legal guardian to his child or ward; or

(d) was by a person to child who is accompanied by his parent or legal guardian or by a person whom the defendant reasonably believes to be the parent or legal guardian of that child.

28.60. When the conviction of any person for the commission of any offense defined in Section 28.50 becomes final, copies of any obscene material described in the indictment, information or complaint or admitted in evidence which were taken from the possession of the defendant and which are in the possession or under the control of the Attorney General or any law enforcement officer or the clerk of the court may be destroyed upon order of the court. A copy of the order shall be mailed to the defendant and his counsel by the clerk of the court. The date fixed for the destruction of the obscene material must be at least thirty days after the mailing of the order.

28.65. A person commits a petty misdemeanor if he exposes his genitals or performs any other lewd act under circumstances in which his conduct is likely to be observed by any person who would be offended or alarmed.

28.70. (a) As used in this section, "sexual contact" has the meaning provided by paragraph (4) of subsection (a) of Section 25.10.

(b) A person is guilty of a petty misdemeanor if he loiters in or near any public place for the purpose of soliciting or being solicited to engage in sexual contact under circumstances in which his conduct is likely to cause offense to other persons.

CHAPTER 31. OFFENSES AGAINST THE FAMILY

31.10. (a) A married person is guilty of bigamy, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(1) the defendant believes that the prior spouse is dead;

(2) the defendant and the prior spouse have been living apart for five consecutive years throughout which the prior spouse was not known by the defendant to be alive;

(3) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the defendant does not know that judgment to be invalid; or

(4) the defendant reasonably believes that he is legally eligible to remarry.

(b) A person is guilty of bigamy if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy.

31.15. A person is guilty of incest, a misdemeanor, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood of an uncle, aunt, nephew or niece of the whole blood. "Cohabit" means to live together under the representation or appearance of being married. The relationships referred to herein include blood relationships without regard to ligitimacy, and relationship of parent and child by adoption.

31.20. (a) "Abortion" means the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(b) An abortion may be performed:

(1) by a physician licensed to practice medicine in this Territory or by a physician practicing medicine in the employ of the government of the United States;

(2) in the physician's adequately equipped medical clinic or in a hospital approved or operated by the United States or this Territory; and

(3) (A) Within 13 weeks after the commencement of the pregnancy; or

(B) Within 26 weeks after the commencement of the pregnancy if the physician has reasonably determined using all available means (i) that the child would be born with a grave physical or mental defect or (ii) that the pregnancy resulted from rape or incest, or

(c) At any time after the commencement of pregnancy if the physician reasonably determines using all available means that there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother.

31.30. (a) A person is guilty of child abuse when:

(1) he subjects a child to cruel mistreatment; or

(2) having a child in his care or custody or under his control, he:

(A) deserts that child with intent to abandon him;

(B) subjects that child to cruel mistreatment; or

(c) unreasonably causes or permits the physical or emotional health of that child to be endangered.

(b) Child abuse is a felony of the third degree when it is committed under circumstances likely to result in death or serious bodily injury. Otherwise, it is a misdemeanor.

31.35. (a) Every physician or surgeon, including doctors of dentistry, examining, attending or treating a child under the age of 18, every school teacher, social worker, or coroner acting in his official capacity, and every nurse examining, attending or treating such a child in the absence of a physician or surgeon, and having reason to believe that such child has had serious injury or injuries inflicted upon him as a result of abuse or neglect, shall report the matter promptly to the Division of Social Services of the Department of Public Health and Social Services; provided that when attendance to a child is pursuant to the performance of services as a member of the staff of a hospital or similar institution, such staff member shall immediately notify the superintendent, administrator, or other person in charge of the institution who shall make the report forthwith.

(b) If the report required by subsection (a) is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as may be after it is initially made by telephone or otherwise. The report shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible therefor.

(c) Any person not listed in subsection (a) who has reason to believe that a minor has had injury inflicted upon him as a result of abuse or neglect may report the matter to the Division of Social Services of the Department of Public Health and Social Services.

(d) The Division of Social Services, upon receiving a report under this section, shall immediately take necessary action toward preventing further abuses, safeguarding and enhancing the welfare of the minor, and preserving family life wherever possible. The Division of Social Services shall report all substantiated cases of child abuse and neglect to the Office of the Attorney General.

(e) Anyone participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil, or criminal, that might otherwise be incurred or imposed.

(f) In any proceeding resulting from a report made pursuant to this section or in any proceeding where such report or any contents thereof are sought to be introduced in evidence, such report or contents or any other facts related thereto or to the condition of the child which is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

(g) The failure of any physician, surgeon, nurse, school teacher, social worker, or coroner to make the reports required by this section shall constitute a petty misdemeanor.

31.37. The Division of Social Services of the Department of Public Health and Social Services shall maintain and keep up-to-date a register of all cases reported to it under Section 31.35 including the final disposition thereof. Records in the register shall be considered

confidential and privileged and will not be available to any person or agency except law enforcement agencies and only when it is to be used for civil or criminal prosecution or for the welfare of the child or children involved.

31.40. (a) A person is guilty of abuse of an incompetent when:

(1) he subjects an incompetent to cruel mistreatment; or

(2) having an incompetent in his care or custody or under his control, he:

(A) deserts that incompetent with intent to abandon him;

(B) subjects that incompetent to cruel mistreatment; or

(C) unreasonably causes or permits the physical or emotional health of that incompetent to be endangered.

(b) As used in this section, "incompetent" means a person who is unable to care for himself because of old age, or because of physical or mental illness, disease, or defect.

(c) Abuse of an incompetent is a felony of the third degree when it is committed under circumstances likely to result in death or serious bodily injury. Otherwise, it is a misdemeanor.

31.45. (a) A person is guilty of failure to provide when having a spouse, child, or indigent parent whom he is legally obliged to support, he knowingly fails to furnish that person with necessary support.

(b) As used in this section, "support" includes food, clothing, shelter, medical attention, and education.

(c) As used in this section, "child" includes a child conceived but not yet born.

(d) In a prosecution under this section, financial inability to provide necessary support is a defense.

(e) In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.

(f) Failure to provide for a period of six or more consecutive months is a felony of the third degree. Otherwise, it is a misdemeanor.

31.50. (a) If at any time before sentencing under any prosecution pursuant to Section 31.45, the defendant appears before the court and enters into any undertaking with sufficient sureties in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will pay to the person having custody of such spouse, child or parent, such sum per month as may be fixed by the court to provide necessary food, clothing, shelter, or medical attendance or other remedial care, then the court may suspend proceedings or sentence therein.

(b) The undertaking provided pursuant to subsection (a) shall be valid and binding for one year, or such lesser time as the court shall fix.

(c) Upon the failure of the defendant to comply with the undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had in the action or why sentence should not be imposed, whereupon the court may proceed with the action, or pass sentence, or for good cause shown may modify the order and take a new undertaking and further suspend proceedings or sentence for a like period.

31.55. In any case where there is a conviction of an offense under Section 31.45 and a sentence to pay a fine, such fine may be directed by the court to be paid in whole or in part to the spouse, child or parent or guardian or custodian of such person.

CHAPTER 34. ARSON, NEGLIGENT BURING, CRIMINAL MISCHIEF

34.10. AS used in this chapter,

(a) "property" means any form of real property or tangible personal property which is capable of being damaged or destroyed.

(b) "habitable property" means any structure, vehicle, or vessel adapted for the accommodation or occupation of persons.

(c) property is that of another if anyone other than the defendant has a possessory or proprietory interest in any portion thereof.

34.20. (a) A person is guilty of aggravated arson if he recklessly damages any habitable property by means of fire or explosives in conscious disregard of a substantial risk that at the time of such conduct a person may be in such habitable property, whether or not a person is actually present.

(b) Aggravated arson is a second degree felony.

34.30. (a) A person is guilty of arson if under circumstances not amounting to aggravated arson he starts a fire or causes an explosion, whether on his own property or another's:

(1) with the intention of defrauding an insurer; or

(2) in reckless disregard of a risk that his conduct will damage or destroy the property of another.

(b) Arson is a third degree felony.

34.40. (a) A person is guilty of negligent burning if he:

(1) negligently starts a fire or causes an explosion whether on his own property or another's, and thereby negligently endangers human life or negligently places the property of another in danger of damage or destruction; or

(2) having started a fire, whether negligently or not, and knowing that its spread will endanger the life or property of another; either fails to take reasonable measures to put out or control the fire, or fails to give a prompt fire alarm.

(b) Negligent burning is a misdemeanor.

34.50. A person commits criminal mischief if:

(a) under circumstances not amounting to arson he damages or destroys property with the intention of defrauding an insurer; or

(b) he intentionally tampers with the property of another and thereby

(1) recklessly endangers human life; or

(2) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or

(c) he intentionally damages the property of another.

34.60. (a) A violation of subsection (b) of Section 34.50 is a third degree felony.

(b) A violation of subsection (a) or (c) of Section 34.50 is a third degree felony if the defendant's conduct causes or is intended to cause pecuniary loss in excess of $500, a misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss in excess of $50, and a petty misdemeanor if the defendant's conduct causes or is intended to cause pecuniary loss in excess of $24. Otherwise, criminal mischief is a violation.

CHAPTER 37. BURGLARY

37.10. As used in this chapter,

(a) "habitable property" has the meaning provided by Section 34.10 and includes any such property whether or not a person is actually present therein.

(b) "night" means the period between thirty minutes past sunset and thirty minutes before sunrise.

(c) "deadly weapon" has the meaning provided by Section 16.10.

37.20. (a) A person is guilty of burglary if he enters or surreptitiously remains in any habitable property or a separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the property was abandoned.

(b) Burglary is a felony of the second degree if it is perpetrated at night in an occupied structure, vehicle, or vessel, or if, in the course of committing the offense, the defendant:

(1) intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone; or

(2) is armed with or displays what appears to be explosives or a deadly weapon.

Otherwise, burglary is a felony of the third degree. An act shall be deemed "in the course of committing" an offense if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

37.30. (a) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any habitable property or any building. An offense under this subsection is a misdemeanor if it is committed in a dwelling. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(1) actual communication to the defendant;

(2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) fencing or other enclosure manifestly designed to exclude intruders.

An offense under this subsection constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person. Otherwise it is a violation.

(c) It is an affirmative defense to prosecution under this section that:

(1) the property or building involved in an offense under subsection (a) was abandoned;

(2) the premises were at the time open to members of the public and the defendant complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) the defendant reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

CHAPTER 40. ROBBERY

40.10. (a) A person is guilty of robbery in the first degree if, in the course of committing a theft, he:

(1) attempts to kill another; or

(2) intentionally inflicts or attempts to inflict serious bodily injury upon another.

(b) Robbery in the first degree is a felony of the first degree.

40.20. (a) A person is guilty of robbery in the second degree if, in the course of committing a theft, he:

(1) inflicts serious bodily injury upon another; or

(2) threatens another with or intentionally puts him in fear of immediate serious bodily injury; or

(3) is armed with or displays what appears to be explosives or a deadly weapon. "Deadly weapon" has the meaning provided by Section 16.10.

(b) Robbery in the second degree is a felony of the second degree.

40.30. (a) A person is guilty of robbery in the third degree if, in the course of committing a theft, he:

(1) uses force against another with intent to overcome his physical resistance or physical power of resistance; or

(2) threatens another with or intentionally puts him in fear of the imminent use of force against the person of anyone with intent to compel acquiescence to the taking of or escaping with property.

(b) Robbery in the third degree is a felony of the third degree.

40.40. An act occurs "in the course of committing a theft" if it occurs in an attempt to commit theft or in flight after the attempt or commission.

40.50. It is no defense to a prosecution of robbery in any of its degrees, that there was no theft because the taking was under a claim of right.

CHAPTER 43. THEFT AND RELATED OFFENSES

43.10. As used in this chapter, unless a different meaning plainly is required:

(a) "deprive" means: (1) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or (2) to abandon the property under circumstances amounting to a reckless exposure to loss.

(b) "movable property" means property the location of which can be changed, including things growing on, or affixed to, or found in land, and documents although the rights represented thereby have no physical location. "Immovable property" is all other property.

(c) "obtain" means: (1) in relation to property, to bring about a transfer or purported transfer of legal interest in the property, whether to the obtainer or another; or (2) in relation to labor or service, to secure performance thereof.

(d) "property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, trade secrets.

(e) "property of another" includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(f) "trade secret" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and is not generally available to the public, and which gives one who uses it an advantage over actual or potential competitors who do not know of or use the trade secret, or the contents of private and unpublished records used in the business of examining, certifying or insuring titles to real property. Proof that the owner takes measures to prevent information from becoming available to persons other than those selected by the owner to have access thereto for limited purposes gives rise to an inference that the information is secret.

43.15. Conduct denominated theft in this chapter constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the accusatory pleading, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

43.20. (a) Theft constitutes a felony of the third degree if the amount involved exceeds $500, or if the property stolen is a firearm, automobile, aircraft, motorcycle, motorboat or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the defendant is in the business of buying or selling stolen property.

(b) Theft not constituting a felony of the third degree is a misdemeanor if the amount involved exceeds $50, or if the property stolen is a credit card, or if the property was taken from the person or by extortion.

(c) Theft not constituting a felony of the third degree or a misdemeanor is a petty misdemeanor.

(d) The amount involved in a theft shall be the fair market value of the property of services which the defendant stole or attempted to steal. Whether or not they have been issued or delivered, written instruments not having a readily ascertained market value shall be evaluated as follows:

(1) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(2) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(e) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, or amounts involved in thefts by a servant, agent or employee from his principal or employer in any period of 12 consecutive months, may be aggregated in determining the grade of the offense.

43.25. (a) It is an affirmative defense to prosecution for theft that the defendant:

(1) was unaware that the property or service was that of another; or

(2) acted in good faith under a claim of right to the property or service involved or that he had a claim of right to acquire or dispose of it as he did.

(b) It is no defense that theft was from the defendant's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

43.30. (a) A person is guilty of theft if he unlawfully takes or obtains or exercises unlawful control over, movable property of another with intent to deprive him thereof.

(b) A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with intent to deprive him thereof.

43.35. (a) A person is guilty of theft if he intentionally obtains property of another by deception. A person deceives if he intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

(2) prevents another from acquiring information which would affect his judgment of a transaction.

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a know lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

(b) The term "deceive" does not include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive typical members of the group addressed.

43.40. (a) A person is guilty of theft if he intentionally obtains property of another by threatening to:

(1) inflict bodily injury on anyone or commit any other criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

(4) take or withhold action as an official, or cause an official to take or withhold action;

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the defendant purports to act;

(6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) do any other act which would not substantially benefit the defendant but which is calculated to harm another person.

(b) It is an affirmative defense to prosecution for extortion by threats to charge any person with a crime that the defendant honestly believed the threatened charge to be true and that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances to which such charge relates.

43.45. A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with intent to deprive the owner thereof, he failed to take reasonable measures to restore the property to a person entitled to have it.

43.50. (a) A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen or believing that it has probably been stolen. It is a defense to a charge of violating this section that the defendant received, retained, or disposed of the property with intent to restore it to the owner.

(b) Where the defendant is in the business of buying, selling or otherwise dealing in property, proof that he obtained stolen property without having made reasonable inquiry whether the person from whom he obtained it has the legal right to sell or deliver it, and that he obtained it under circumstances which should have caused him to make such inquiry, gives rise to an inference that he obtained it knowing that it has been stolen or believing that it has probably been stolen.

43.55. (a) A person is guilty of theft if he intentionally obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. "Services" include labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to an inference that the service was obtained by deception as to intention to pay.

(b) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

43.60. A person who in the course of business obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property as his own and fails to make the required disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

43.65. (a) A person commits a misdemeanor if he operates an automobile, aircraft, motorcycle, motorboat or other motor-propelled vehicle or vessel, or sailboat, without consent of the owner or other person authorized to give consent.

(b) It is an affirmative defense to prosecution under this section that the defendant reasonably believed that the owner or other person authorized to give consent would have consented to the operation had he known of it.

CHAPTER 46. FORGERY AND FRAUDULENT PRACTICES

46.10. (a) A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he:

(1) falsely makes a written instrument by drawing a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible make, but which is not either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

(2) falsely completes a written instrument by transforming through adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(3) falsely alters a written instrument by change, without authorization by anyone entitled to grant it, of a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(4) induces another by deception to sign or execute a written instrument which is not what it has been represented to be; or

(5) utters any written instrument which he knows to be forged in a manner specified in paragraphs (1), (2), (3) or (4).

(b) "Written instrument" includes printing or any other method of recording information, money, coins, tokens, tickets, stamps, seals, credit cards, badges, trade-marks, and other symbols of value, right, privilege, or identification.

(c) Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, stamps, securities, or other valuable instruments issued by a government or governmental agency, or part of an issue of stock, bonds or other instruments representing interests or claims against a corporate or other organization or its property. Forgery is a felony of the third degree if the writing is or purports to be a will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

46.15. A person commits a misdemeanor if, with intent to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

46.20. A person commits a felony of the third degree if, with intent to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

46.25. A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with intent to deceive or injure anyone or to conceal any wrongdoing.

46.30. (a) A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a petty misdemeanor.

(b) For the purposes of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order would not be paid, if:

(1) the issuer had no account with the drawee at the time the check or order was issued; or

(2) payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

(c) It is an affirmative defense to prosecution of an issuer under this section that the check or order was post-dated, or that the defendant informed the person to whom the check or order was issued that it would not be honored unless funds were deposited or credit established with the drawee in the future.

46.35. (a) A person commits an offense if he uses a credit card with the intent of obtaining property or services with knowledge that:

(1) the card is stolen or forged;

(2) the card has been revoked or cancelled; or

(3) for any other reason his use of the card is unauthorized.

(b) It is an affirmative defense to prosecution under paragraph (3) of subsection (a) if the defendant proves by a preponderance of the evidence that he had the ability and intended to meet all obligations to the issuer arising out of his use of the card.

(c) "Credit card" means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(d) An offense under this section is a felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card exceeds $500; otherwise it is a misdemeanor.

46.40. (a) A person commits a misdemeanor if in the course of business he:

(1) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

(3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) sells, offers or exposes for sale adulterated or mislabeled commodities. "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulation, or, if none, as set by established commercial usage. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulation or, if none, as set by established commercial usage;

(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof with the intent of promoting the purchase or sale of property or services;

(6) makes a false or misleading written statement with the intent of obtaining property or credit; or

(7) makes a false or misleading written statement with the intent of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(b) It is an affirmative defense to prosecution under subsection (a) if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

46.45. (a) A person commits a misdemeanor if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:

(1) agent or employee of another;

(2) trustee, guardian, or other fiduciary;

(3) lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(4) officer, director, partner, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(5) arbitrator or other purportedly disinterested adjudicator or referee.

(b) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

(c) A person commits a misdemeanor if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.

46.50. (a) A person commits a misdemeanor if, with intent to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or

(2) tampers with any person, animal or thing.

(b) A person commits a misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under subsection (a).

(c) A person commits a petty misdemeanor if he fails to report, with reasonable promptness, a solicitation to accept any benefit or to do any tampering, the giving or doing of which would be criminal under subsection (a).

46.55. (a) A person commits an offense, if he:

(1) destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent to defeat enforcement of that security interest;

(2) sells, assigns, exchanges, secretes, injures, destroys or otherwise disposes of any property upon which he has previously executed a mortgage or any instrument that operates as such, with intent to defraud the mortgagee or a purchaser thereof;

(3) secretes, removes, assigns, conveys or otherwise disposes of his property with intent to defraud a judgment creditor or to prevent that property from being made liable for the payment of his debts;

(4) with intent to defraud, buys, receives, conceals or aids in concealing personal property, knowing it or any interest therein to be hired, leased or held as collateral security; or

(5) Intentionally sells, mortgages, conveys, conceals or aids in concealing personal property received by him upon a written conditional sale or lease agreement, or any other written agreement by which it or any interest therein is held as collateral security, before performance of any conditions precedent to acquiring the title thereto (A) without the consent in writing of the conditional seller, lessor or other holder of the security interest or (B) without disclosure to any buyer or transferee of the existence and terms of the conditional sale, lease or security agreement.

(b) An offense under this section is a felony of the third degree if the value of the property which is the subject of the offense exceeds ten thousand dollars in value. Otherwise the offense is a misdemeanor.

46.60. (a) A person commits a misdemeanor, if, with intent to defraud a creditor and with knowledge either that proceedings have been or are about to be instituted for the appointment of an administrator or that a composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he:

(1) conveys, transfers, removes, conceals, destroys, encumbers or otherwise disposes of any part of or any interest in the debtor's estate:

(2) obtains any substantial part of or interest in the debtor's estate;

(3) presents to any creditor or to the administrator any writing or record relating to the debtor's estate or to a creditor's claim, knowing the writing or record to contain a false material statement;

(4) fails or refuses to disclose any information that he is required by law to furnish to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate; or

(5) misrepresents any information furnished to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate.

(b) As used in this section, "administrator" means an assignee or trustee for the benefit of creditors, conservator, a receiver or any other person entitled to administer property for the benefit of creditors.

46.65. (a) As used in this section, "financial institution" means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(b) An officer, manager or other person directing or participating in the direction of a financial institution commits a misdemeanor if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:

(1) due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and

(2) the person making the deposit or other payment is unaware of the precarious situation of the institution.

46.70. (a) A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

(b) The offense is a misdemeanor if the amount involved exceeds $50; otherwise it is a petty misdemeanor.

(c) "Fiduciary" includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(d) "Financial institution" has the meaning provided in subsection (a) of Section 46.65.

46.75. A person commits a misdemeanor if by deception he causes another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

46.80. A person commits a petty misdemeanor, if, knowing he has no right do so, he:

(a) impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud anyone;

(b) pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another;

(c) pretends in writing to possess any degree, certificate, license, honor or award;

(d) impersonates, pretends to be or assumes the name of a fraternal, educational, professional, charitable, veterans or labor organization or association or a name so closely resembling the name of such organization or association as to be calculated or likely to cause deception; or

(e) pretends to be a member, officer or agent of a fraternal, educational, professional, charitable, veterans or labor organization or association, by express or implied statement or by the wearing or display of any insignia or other device.

CHAPTER 49. GOVERNMENTAL BRIBERY, OTHER UNLAWFUL INFLUENCE AND RELATED OFFENSES

49.10. As used in this chapter,

(a) "benefit" means any gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested other than the beneficiary's lawful compensation.

(b) "official function" means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.

(c) "pecuniary benefit" means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(d) "public servant" means any officer, member, or employee of the legislative, executive, or judicial branches of the Territory or of any governmental instrumentality within the Territory, any juror, any persons exercising the functions of any such position, or any referee, arbitrator, hearing officer, or other person authorized by law to hear or determine any question or controversy. It includes a person who has been elected, appointed or designated to become a public servant, and, in the case of juror, a person who has been drawn, empanelled, or designated to attend as a prospective grand or petit juror.

49.20. A person is guilty of a felony of the third degree if he offers, confers upon, or agrees to confer upon, a public servant any benefit as consideration for his performance of an official function.

49.30. A public servant is guilty of a felony of the third degree if he solicits, accepts or agrees to accept any benefit from another person as consideration for his performance of an official function.

49.40. A person is guilty of a felony of the third degree if:

(a) he offers, confers upon, or agrees to confer upon, another person any benefit as consideration for improperly influencing or attempting to influence a public servant in the performance of an official function.

(b) he solicits, accepts or agrees to accept any benefit from another person as consideration for improperly influencing or attempting to influence a public servant in the performance of an official function.

49.50. A person is guilty of a felony of the third degree if he influences or attempts to influence the performance of an official function by a public servant by any threat which would constitute a means of committing the offense of theft by extortion under this code if such threat were employed to obtain property.

49.60. A person is guilty of a misdemeanor if he offers, confers upon, or agrees to confer upon, a public servant any pecuniary benefit for having performed an official function in a manner favorable to him, or for having violated his duty.

49.70. A public servant is guilty of a misdemeanor if he solicits, accepts or agrees to accept any pecuniary benefit for having performed an official function in a manner favorable to another person, or for having violated his duty.

49.80. A public servant commits a misdemeanor if, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has or has had access in his official capacity and which has not been made public, he:

(a) acquires or divests himself of a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action;

(b) speculates or wagers on the basis of such information or official action; or

(c) aids another to do any of the foregoing, while in office or after leaving office with the intent of using such information.

49.90. A public servant commits a misdemeanor if, with intent to benefit himself or another person or to harm another person or to deprive another of a benefit;

(a) he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

(b) he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

CHAPTER 52. PERJURY AND OFFENSES AGAINST THE INTEGRITY OF OFFICIAL PROCEEDINGS

52.10. As used in this chapter,

(a) "official function" and "public servant" have the meanings provided for those terms by Section 49.10.

(b) "material statement" means a statement which affected or could have affected the course or outcome of a proceeding, regardless of its admissibility under rules of evidence.

(c) "official proceeding" means a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer an oath or cause it to be administered, including any referee, hearing officer, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

(d) "public record" means any record, document, thing belonging to, or received or kept by the Government of Guam or any governmental instrumentality within the Territory.

(e) "statement" means any non-trivial representation, but a representation of opinion, belief or other state of mind is a statement only if it clearly relates to a state of mind apart from or in addition to the facts which it otherwise represents.

(f) "statement under oath" means

(1) a statement made pursuant to a swearing, an affirmation, or any other mode authorized by law of attesting to the truth of that which is stated; and

(2) a statement made on a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(3) "testimony" means oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.

52.15. (a) A person is guilty of perjury if, under oath in an official proceeding, he makes a false statement which is material and which he does not believe to be true.

(b) Whether a statement is material is a question of law.

(c) Perjury is a felony of the third degree.

52.20. A person is guilty of a misdemeanor if he makes a false statement under oath which he does not believe to be true and:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is intended to mislead a public servant in performing his official function.

52.25. It is not a defense to any offense defined in Section 52.15 or Section 52.20 that:

(a) the oath was administered or taken in an irregular manner;

(b) the authority or jurisdiction of the person administering the oath was defective, if the defect was excusable under any statute or rule of law;

(c) the statement was subject to a proper objection, whether or not such objection was made; or

(d) the defendant mistakenly believed the falsification to be immaterial, where materiality of the statement is an element of the offense.

52.30. A person is guilty of a misdemeanor if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

(a) any written false statement of his own which he does not then believe to be true; or

(b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

52.40. A person is guilty of a felony of the third degree if, by any threat which would constitute a means of committing the offense of theft by extortion under this code if such threat were employed to obtain property, he:

(a) attempts to induce any person to refrain from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; or

(b) attempts to induce any person who has been or may be properly called as a witness in any official proceeding to give false testimony in, to withhold testimony or information from, or to fail to attend, any such proceeding.

52.45. A person is guilty of a felony of the third degree if he:

(a) offers, confers upon, or agrees to confer upon, any person any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to any offense; provided that it is an affirmative defense to a prosecution under this subsection that the benefit was honestly offered or conferred as restitution or indemnification for harm done in the circumstances of the offense;

(b) Offers, confers upon, or agrees to confer upon, any person who has been or may be properly called as a witness in any official proceeding any benefit as consideration for giving false testimony or information, for withholding testimony or information from, or for failing to attend, any such official proceeding;

(c) solicits, accepts or agrees to accept any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; provided that it is an affirmative defense to a prosecution under this subsection that the benefit was honestly claimed as restitution or indemnification for harm done in the circumstances of the offense; or

(d) solicits, accepts or agrees to accept, in connection with any official proceeding to which he has been or may be properly called as a witness, any benefit as consideration for giving false testimony or information in, for withholding testimony or information from, or for failing to attend, any such official proceeding.

52.50. A person is guilty of a misdemeanor if he attempts to induce any person to give false testimony in or to withhold testimony from any official proceeding to which he has been or may be properly called as a witness, or to fail to attend any official proceeding to which he has been lawfully called as a witness.

52.55. A person is guilty of a felony of the third degree if, believing that an official proceeding has been or is about to be instituted, he prepares, offers in evidence or uses any record, document or thing, knowing it to be false and with intent to mislead a public servant who is or may be engaged in the proceeding.

52.60. A person is guilty of a misdemeanor if, believing that an official proceeding has been or is about to be instituted, he destroys, conceals or removes any record, document or thing with intent to impair its availability in the proceeding.

52.65. A person is guilty of a misdemeanor if, with intent to influence the outcome of an official proceeding, he communicates with a juror, except as may be authorized by law.

CHAPTER 55. INTERFERENCE WITH GOVERNMENT OPERATIONS AND LAW ENFORCEMENT

55.10 (a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;

(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1); or

(3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(b) An offense under this section is a misdemeanor unless the defendant's intent is to defraud or injure anyone, in which case the offense is a felony of the third degree.

55.15. (a) A person is guilty of hindering apprehension or prosecution if, with intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of an offense, he:

(1) harbors or conceals the other person;

(2) provides or aids in providing a weapon, transportation, disguise or other means of avoiding discovery or apprehension;

(3) conceals, alters or destroys any physical evidence that might aid in the discovery, apprehension or conviction of such person;

(4) warns such person of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;

(5) obstructs by force, intimidation or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person; or

(6) aids such person to safeguard the proceeds of or to profit from such offense.

(b) Hindering apprehension or prosecution is a felony of the third degree if the defendant knows that the charge made or liable to be made against the other person is a felony of the first or second degree. Otherwise the offense is a misdemeanor.

55.20. A person is guilty of a misdemeanor when, with knowledge of its falsity, he causes a false alarm of fire or other emergency to be transmitted to any organization that responds to emergencies involving danger to life or property.

55.25. A person commits a misdemeanor who:

(a) knowingly gives false information to any law enforcement officer with intent to induce such officer to believe that another person has committed an offense;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) makes a report which purports to furnish law enforcement authorities with information relating to an offense or incident when he knows that he has no such information.

55.30. A person commits a misdemeanor if he falsely pretends to hold a position in the public service with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

55.35. A person is guilty of a misdemeanor when, with intent to prevent or delay the arrest of himself or another person by one whom he knows or reasonably should know to be a peace officer acting in an official capacity, he prevents or delays that arrest by the use or threat of force or by physical obstruction.

55.45. A person commits a misdemeanor if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

CHAPTER 58. ESCAPE AND RELATED OFFENSES

58.10. AS used in this chapter,

(a) "custody" means restraint by any public officer or employee pursuant to an order of a court other than an arrest warrant or restraint by a peace officer or other person concerned in detention (1) pursuant to an arrest, with or without an arrest warrant, during or subsequent to the official booking of the person arrested or (2) in a detention facility.

(b) "detention facility" means

(1) any place used for confinement, pursuant to an order of a court, of (A) persons charged with or convicted of an offense, (B) persons against whom judicial proceedings leading to involuntary confinement have begun, are pending or have been concluded, or (C) persons against whom extradition orders are sought or have been obtained.

(2) any place to which a person ordered to be confined to a detention facility pursuant to paragraph (1) has been or is being lawfully taken for purposes of labor, court appearance, recreation, medical or hospital care, transit, or similar purpose.

(c) Notwithstanding subsections (a) and (b), neither "custody" nor "detention facility" includes release on parole, probation or other correctional supervision, or constraint incident to release, with bail or on one's own recognizance, by court order or by other lawful authority upon condition of subsequent personal appearance at a designated time and place.

(d) "escape implement" means any article or thing which is capable of such use as may endanger the security of a detention facility or facilitate the escape of any person confined therein.

58.20. A person is guilty of a felony of the third degree if he:

(a) escapes from within a detention facility where he is in custody upon a felony charge or conviction; or

(b) escapes from custody with the use or threat of use of force or violence upon another person or by any means creating a substantial risk of physical injury to another person.

58.30. A person is guilty of a misdemeanor if he escapes from custody.

58.40. A public servant concerned in detention is guilty of a felony of the third degree if he knowingly assists an escape.

58.50. (a) A person is guilty of providing escape implements if he knowingly introduces any escape implement within a detention facility, with intent to cause or assist the escape of any person confined therein.

(b) A person confined within a detention facility is guilty of providing escape implements if he knowingly makes, obtains or possesses any escape implement with intent to effect an escape of himself or any other person.

(c) Providing escape implements is a felony of the third degree.

CHAPTER 61. RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES

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

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

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

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

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

61.15. (a) A person is guilty of disorderly conduct, if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) engages in fighting or threatening, or in violent or tumultous behavior;

(2) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(3) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the defendant.

(b) As used in this section, "public" means affecting or likely to affect persons in a place to which the public or a substantial group has access. Among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(c) An offense under this section is a petty misdemeanor if the defendant's intent is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

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

(a) makes, or causes to be made, a communication anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

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

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

61.25. (a) A person is guilty of an offense if he appears in any public place manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property or annoy persons in his vicinity.

(b) An offense under this section constitutes a petty misdemeanor if the defendant has been convicted hereunder twice before within a period of one year. Otherwise the offense constitutes a violation.

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

(b) Unless flight by the person or other circumstances makes it impracticable, a peace officer shall prior to any arrest for an offense under this section afford the person an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.

(c) No person shall be convicted of an offense under this section if the peace officer did not comply with subsection (b) or if it appears at trial that the explanation given by the person was true and, if believed by the peace officer at the time, would have dispelled the alarm.

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

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

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

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

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

61.50. A person commits a misdemeanor if he intentionally and unlawfully disinters, removes, conceals, mutilates or destroys a human corpse or any part thereof.

CHAPTER 64. GAMBLING

Article 1. Gambling generally

64.10. (a) Except as otherwise provided by this chapter, a person commits a misdemeanor when he:

(1) makes or accepts a wager involving money or anything of monetary value upon the result of any game or contest;

(2) holds any money or anything of monetary value which he knows has been wagered in violation of paragraph (1); or

(3) sets up or promotes any lottery or sells or buys any lottery ticket.

(b) As used in this section, "lottery" means a plan whereby prizes are distributed by chance among persons who have paid or promised to pay anything of monetary value for a chance to win a prize.

64.20. (a) Except as otherwise provided by this Chapter, Section 47104.1 and Chapter 3 (commencing with Section 62200 of. Title LX VI of the Government Code) a person commits a misdemeanor when he possesses a gambling device, whether operable or not, unless the gambling device is located upon or is being transported by a vessel regularly operating and engaged in domestic or foreign commerce, and is located in a locked compartment of the vessel and is not accessible for use and is not used or operated within the territorial jurisdiction of this territory.

(b) As used in this section, "gambling device" means a mechanical device which, when operated, may return something of value to the user as the result of the application of chance; or by the operation of which a person may become entitled to receive something of value as the result of the application of chance. It does not include pinball and other amusement machines or devices which are predominantly games of skill, whether affording the opportunityof additional chances or free plays or not.

the Territory of Guam and shall become part of the general funds of the Territory and shall be subject to general appropriation.

Article 2. Authorized activities

64.30. Section 64.10 does not apply to making or accepting a wager upon the result of a game or contest when:

(a) the game or contest takes place on private premises;

(b) all the wagerers are present at that premise;

(c) no charge is made directly or indirectly as a condition of entering the premises or wagering upon the result of the game or contest; and

(d) nothing is sold, offered for sale, or rented on the premises.

64.40. Section 64.10 does not apply to making or accepting a wager upon the result of a cockfight when:

(a) the cockfight takes place at a licensed cockpit; and

(b) all the wagerers are present at the cockpit and are 18 years of age or more.

64.50. Section 64.10 does not apply to making or accepting a wager authorized by Title LXIV (commencing with Section 59000) of the Government Code.

64.55. Section 64.10 does not apply to making or accepting a wager authorized by Chapter IV (commencing with Section 26400) of Title XXVII of the Government Code.

(b) A permit to conduct gambling activities shall be issued by the Director of the Department of Revenue and Taxation if:

(1) the organization which applies for the permit has been organized and functioning actively as a nonprofit organization in the Territory for not less than two years prior to filing its application and is (A) a church or religious organization, (B) a fraternal or fraternal benefit society, (C) an educational or charitable organization or (D) a club or organization organized and operated exclusively for pleasure, recreation and other nonprofit purposes no part of the net earnings of which inures to the benefit of any member or shareholder;

(2) the promotion and conduct of such gambling activities are confined solely to the qualified members of the sponsoring organization, no member of which receives remuneration in any form for time or effort devoted to the promotion and conduct of the gambling activities; and

(3) all net proceeds derived from such gambling activities are used exclusively for the purposes stated in the sponsoring organization's application to conduct such activities, which purposes shall be limited to educational, charitable, religious, fraternal or civic purposes.

(c) An organization which meets the requirements of subsection (b) and which desires to conduct or operate gambling activities shall apply for a permit to conduct such activities from the Director of the Department of Revenue and Taxation. The application form shall include the name and address of the applicant, the evidence on which the applicant relies in order to qualify under subsection (b), the names of three officers or members of the organization who shall be responsible for the operation of the gambling activities, and the uses to which the net proceeds will be applied. Upon receipt of such application the Director shall determine whether it is in conformity with this section. If so, the Director shall forthwith issue a permit. The permit shall be valid for one year from the date of its issuance. The Director shall retain a copy of the application. If there is any change

subsequent to the making of the application for a permit in the facts set forth therein, the applicant shall forthwith notify the Director of such change, and the Director shall issue a permit if the applicant is qualified, or, if a permit has already been issued and the change in the facts set forth in the application disqualify the applicant, the Director shall revoke such permit.

If an application for a permit to conduct gambling activities is not acted upon within thirty days after submission, or if the organization is denied a permit, or if a permit is revoked, any person named on the application may obtain a judicial review of such inaction, refusal or revocation by filing a petition for review in the Superior Court. Such petition for review shall be filed within ten days of the refusal or revocation of a permit or within ten days of the expiration of the thirty-day period. If the court is satisfied that there was no reasonable ground for refusing a permit and that the applicant was not prohibited by law from holding gambling activities, he may direct that such permit be issued.

(d) The Director shall immediately revoke a permit in case of violation of any provision of this section, and the Director shall not issue any permit to such permittee within three years following the date of such violation. Any person aggrieved by such action may appeal to the Superior Court provided that such appeal is filed within twenty days following receipt of notification by the Director. The court shall hear all pertinent evidence and determine the facts; upon the facts so determined the court shall annul such action or make such decision as equity may require. This remedy shall be exclusive.

(e) An organization which is issued a permit shall submit a report to the Director on a form to be approved by him within thirty days of the expiration of the permit. Such form shall require information concerning the nature of the gambling activities held, the amount of money received, the expenses incurred in connection with such activities, the net proceeds of such activities, and the uses to which the net proceeds were applied. The organization shall maintain and keep such books and records as may be necessary to substantiate the particulars of such report; such books and records shall be preserved for at least one year after such report is submitted and shall be available for inspection. The report shall be certified to by the three persons designated in the permit application as responsible for such gambling activities and by an accountant. Failure to file such a report shall constitute sufficient grounds for refusal to renew a permit to conduct gambling activities.

CHAPTER 67. UNIFORM CONTROLLED DANGEROUS SUBSTANCES ACT

Article 1. Definitions; Interpretation

67.10. This chapter may be cited as the Uniform Controlled Substances Act.

67.12. As used in this chapter:

(a) 'Administer' means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:

(1) a practitioner (or, in his presence, by his authorized agent), or

(2) the patient or research subject at the direction and in the presence of the practioner.

(b) 'Agent' means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

(c) 'Bureau' means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.

(d) 'Controlled substance' means a drug, substance, or immediate precursor in Schedules I through V of Article 2.

(e) 'Counterfeit substance' means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(f) 'Deliver' or 'Delivery' means the actual, constructive, or attempted transfer of a controlled substance whether or not there exists an agency relationship.

(g) 'Dispense' means to deliver a controlled substance to the ultimate user or human research subject by or pursuant to the lawful orders of a practitioner, including prescribing, administering, the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(h) 'Dispenser' is a practitioner who dispenses.

(i) 'Distribute' means to deliver other than by administering or dispensing a controlled substance.

(j) 'Distributor' means a person who distributes.

(k) 'Drug' means (1) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection; but does not include devices or their components, parts, or accessories.

(l) 'Drug dependent person' means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

(m) 'Manufacture' means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation of compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(n) 'Marihuana' means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed or such plant which is incapable of germination.

(o) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(p) 'Opiate' means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 67.20, the destrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (destromethorphan). It does include its racemic and lavorotatory forms.

(q) 'Opium poppy' means the plant of the species Papaver somnifarum L., except the seeds thereof.

(r) 'Person' means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(s) 'Poppy straw' means all parts, except the seeds of the opium poppy, after mowing.

(t) 'Practitioner' means:

(1) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise authorized by the Governor to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this territory.

(2) a pharmacy, hospital or other institution license registered or otherwise authorized by the Governor to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this territory.

(u) 'Production' includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(v) 'Immediate precursor' means a substance which the Governor has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

(w) 'Ultimate user' means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

(x) 'Governor' means the Governor or any officer or agency he may designate to enforce this Chapter.

67.14. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

ARTICLE 2. STANDARDS AND SCHEDULES

67.20. (a) The Governor shall control all substances enumerated in Sections 67.23, 67.25, 67.27, 67.29, and 67.31 and may make regulations pursuant to the procedures of the Administrative Adjudication Act to add, delete, or reschedule a substance as a controlled substance. In making such a determination, the Governor shall consider the following:

(1) its actual or relative potential for abuse;

(2) scientific evidence of its pharmacological effect, if known;

(3) state of current scientific knowledge regarding the substance;

(4) its history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) what, if any, risk there is to the public health;

(7) its psychic or physiological dependence liability and

(8) whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the above factors, the Governor shall make findings with respect thereto and shall issue a rule controlling the substance if he finds that the substance has a potential for abuse.

(c) If the Governor designates a substance as an immediate precursor, substances which are precursors, of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under Federal law and notice thereof is given to the Governor, the Governor shall similarly control the substance under this act after the expiration of thirty (30) days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty (30) day period, the Governor objects to inclusion, rescheduling, or deletion. In that case, the Governor shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the Governor shall publish his decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this Act by the Governor, control under this Act is stayed until the Governor publishes his decision.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco.

§ 67.21. The following Schedules include the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

67.22. The Governor shall place a substance in Schedule I if he finds that the substance:

(1) has a high potential for abuse; and

(2) has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

67.23. (a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Acetylmethadol;
2. Allylprodine;
3. Alphacetylmethadol;
4. Alphameprodine;
5. Alphamethadol;
6. Benzethidine;
7. Betacetylmethadol;
8. Betameprodine;
9. Betamethadol;
10. Betaprodine;
11. Clonitazene;
12. Dextromoramide;
13. Dextrorphan;
14. Diampromide;
15. Diethyliambutene;
16. Dimenoxadol;
17. Dimepheptanol;
18. Dimethyliambutene;
19. Dioxaphetyl butyrate;
20. Dipipanone;
21. Ethylmethylthiambutene;
22. Etonitazene;
23. Etoxeridine;
24. Furethidine;
25. Hydroxypethidine;
26. Ketobemidone;
27. Levomoramide;
28. Levophenacylmorphan;
29. Morpheridine;
30. Noracymethadol;
31. Norlevorphanol;
32. Normethadone;
33. Norpipanone;
34. Phenadoxone;
35. Phenampromide;

36. Phenomorphan;

37. Phenoperidine;

38. Piritramide;

39. Proheptazine;

40. Properidine;

41. Racemoramide;

42. Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Acetorphine;

2. Acetyldihydrocodeine;

3. Benzylmorphine;

4. Codeine methylbromide;

5. Codeine-N-Oxide;

6. Cyprenorphine;

7. Desomorphine;

8. Dihydromorphine;

9. Etorphine;

10. Heroin;

11. Hydromorphinol;

12. Methyldesorphine;

13. Methyldihydromorphine;

14. Morphine methylbromide;

15. Morphine methylsulfonate;

16. Morphine-N-Oxide;

17. Myrophine;

18. Nococodeine;

19. Nicomorphine;

20. Normorphine;

21. Phoclodine;

22. Thebacon

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxy amphetamine:

2. 5-methoxy-3, 4-methylenedioxy amphetamine;

3. 3, 4, 5-trimethoxy amphetamine;

4. Bufotenine;

5. Diethyltryptamine;

6. Dimethyltryptamine;

7. 4-methyl-2, 5-dimethoxylamphetamine;

8. Ibogaine;

9. Lysergic acid diethylamide;

10. Marihuana;

11. Mescaline;

12. Peyote;

13. N-ethyl-3-piperidyl benzilate;

14. N-methyl-3-piperidyl benzilate;

15. Psilocyn;

16. Psilocion;

17. Tetrahydrocannabinol.

67.24. The Governor shall place a substance in Schedule II if he finds that:

(1) the substance has a high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) abuse of the substance may lead to severe psychic or physical dependence.

67.25. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances except those narcotic drugs listed in other schedules, whether produced directly be extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

2. Any salt, compound, isomers, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in number 1, but not including the isoquinoline alkoloids of opium;

3. Opium poppy and poppy straw;

4. Coca leaves and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their immediate isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Alphaprodine;

2. Anileridine;

3. Bezitramide;

4. Dihydrocodeine;

5. Diphenoxylate;

6. Fentanyl;

7. Isomethadone;

8. Levomethorphan;

9. Levorphanol;

10. Metazocine;

11. Methadone;

12. Methadone-Intermediate, 4-cyano-2-dimethylamine-4, 4-diphenyl butane;

13. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

14. Pethidine;

15. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenyl-piperidine;

16. Pethidine-Intermediate-B, ethyl-r-phenly-piperidine-4-carboxylic acid;

17. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperdine-4-carboxylic acid;

18. Phenazocine;

19. Piminodine;

20. Racemethorphan;

21. Racemorphan.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers;

2. Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

67.26. The Governor shall place a substance in Schedule III if he finds that:

(1) the substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

67.27. (a) The controlled substances listed in this section are included in Schedule III.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulate effect on the central nervous system:

1. Phenmetrazine and its salts;

2. Methylphenidate.

(c) Unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

2. Chlorhexadol;

3. Glutethimide;

4. Lysergic acid;

5. Lysergic acid amide;

6. Methyprylon;

7. Phencyclidine;

8. Sulfondiethylmethane;

9. Sulfonethylmethane;

10. Sulfonmethane.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

1. Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

2. Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

3. Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

4. Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit; with one or more active, non-narcotic ingredients in recognized therapeutic amounts,

5. Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

6. Not more than 300 milligrams of ethylmorphine or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

8. Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(f) The Governor may except by rule any compound, mixture, or preparation containing any stimulant or depresant substance listed in subsections (b) and (c) of this schedule above from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

67.28. The Governor shall place a substance in Schedule IV if he finds that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.

67.29. (a) The controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture, or preparation which contains any quanity of the following substances or salts thereof having a potential for abuse associated with a depressant effect on the central nervous system:

1. Barbital;
2. Chloral betaine;
3. Chloral hydrate;
4. Ethchlorvynol;
5. Ethinamate;
6. Methohexital;
7. Meprobamate;
8. Methylphenobarbital;
9. Paraldehyde;
10. Petrichloral;

11. Phenobarbital.

(c) The Governor may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

67.30. The Governor shall place a substance in Schedule V if he finds that:

(1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

67.31. (a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

2. Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

3. Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

4. Not more than 2.5 milligrams of diphenoxylate, and not less than 25 micrograms of atropine sulfate per dosage unit.

5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams, or not more than 5 milligrams per dosage unit.

67.32. The Governor shall revise and republish the Schedules annually and make them available to any registrant law enforcement agency or any member of the public desiring such list.

Article 3. Regulation of Manufacture, Distribution and Dispensing of Controlled Dangerous Substances

67.34. The Governor is authorized to promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within Guam.

67.36. (a) Every person who manufactures, distributes or dispenses any controlled substance within Guam or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within Guam, shall obtain annually a registration issued by the Governor in accordance with the rules made by him.

(b) Persons registered by the Governor under this Act to manufacture, distribute-dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extend authorized by their registration and in conformity with other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under the provisions of this Act:

(1) an agent, or an employee thereof, of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose posession of any controlled substance is in the usual course of his business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The Governor may, by rule, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

(e) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The Governor or his designee may inspect the establishment of a registrant or applicant for registration in accordance with the rules promulgated by him.

67.38. (a) The Governor shall register an applicant to manufacture or distribute controlled substances included in Schedules I through V of Article 2 unless he determines that the issuance of that registration is inconsistent with the public interest. In determining the public interest, the Governor shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable law;

(3) prior conviction record of applicant under Federal, State and local laws relating to controlled substances;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this Act;

(6) suspension or revocation of the applicant's Federal registration to manufacture, distribute, or dispense controlled substances as authorized by Federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration granted under subsection (a) of this section shall not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II or other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this territory. The Governor need not require separate registration under this article for practitioners engaging in research with non-narcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under Federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this territory upon furnishing evidence of that Federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the Federal law respecting registration (excluding fees) shall be deemed compliance with this section.

67.40. (a) A registration pursuant to Section 67.38 to manufacture, distribute, or dispense a controlled substance, may be suspended or revoked by the Governor upon a finding that the registrant:

(1) has materially falsified any application filed pursuant to this act or required by this act;

(2) has been convicted of any violation under this Act or any law of the United States, or of any Sate, relating to any substances defined herein as a controlled substance; or

(3) has had his Federal registration suspended or revoked by competent Federal authority and is no longer authorized by Federal law to engage in the manufacturing, distribution, or dispensing of controlled substances;

(4) has violated any regulation promulgated by the Governor relating to Article 3; or

(5) will abuse or unlawfully transfer such substances or that the registrant will fail to safeguard adequately his supply of such substances against diversion into other than legitimate channels of distribution.

(b) The Governor may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) In the event the Governor suspends or revokes a registration granted under Section 67.38, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the Governor be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances shall be forfeited.

(d) The Bureau shall promptly be notified of all order suspending or revoking registration and all forfeitures of controlled substances.

67.42. (a) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the Governor shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the Governor at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted in accordance with the Administrative Adjudication Law without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the admnistrative hearing.

(b) The Governor may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 67.40, or where renewal of registration is refused, if he finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the Governor or dissolved by a court of competent jurisdiction.

67.44. Persons registered to manufacture, distribute, or dispense controlled substances under this Act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of Federal law and in accordance with any rules or regulations adopted by the Governor pursuant to the provisions of this Act.

67.46. Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of Federal law respecting order forms shall be deemed compliance with this section.

67.48. (a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II, may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the Governor, Schedule II drugs may be dispensed upon oral prescription of a practitioner reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 67.44 of this Chapter. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner other than a pharmacy, to an ultimate user, a controlled substance included in Schedules III or IV which is a prescription drug, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) No prescription for a controlled substance shall be filled or refilled with more than a thirty (30) day supply, based upon the dosage units contained in the prescription.

Article 4. Offenses and Penalties

67.50. (a) Except as authorized by this Act, it shall be unlawful for any person knowingly or intentionally:

(1) to manufacture, deliver, or possess with intent to manufacture, deliver or dispense, a controlled substance; or

(2) to create, distribute, or possess with intent to deliver, a counterfeit controlled substance.

(b) Any person who violates subsection (a) with respect to:

(1) a substance classified in Schedules I or II which is a narcotic drug shall be guilty of a felony of the second degree;

(2) any other controlled substance classified in Schedules I, II, or III shall be guilty of a felony of the third degree;

(3) a substance classified in Schedules IV of V shall be guilty of a misdemeanor.

67.52. (a) It is unlawful for any person knowingly or intentionally to possess a controlled substance, unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Act.

(b) Any person who violates subsection (a) with respect to:

(1) any controlled substance except marihuana shall be guilty of a felony of the third degree.

(2) more than one ounce of marihuana shall be guilty of a petty misdemeanor.

(3) one ounce or less of marihuana shall be guilty of a violation and punished by a fine of One Hundred Dollars ($100).

67.54. (a) It shall be unlawful for any person:

(1) who is subject to the requirements of Article 3 to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(2) who is a registrant to manufacture, distribute, or dispense a controlled substance not authorized by his registration to another registrant or other authorized persons;

(3) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this Act, or

(4) to refuse an entry into any premises for any inspection authorized by this act.

(5) to knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any other structure or place whatever, which is resorted to by persons using controlled substances in violation of this Act for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this Act.

(b) Any person who violates this section is guilty of a felony of the third degree.

67.56. (a) It shall be unlawful for any person knowingly or intentionally:

(1) who is a registrant to distribute a controlled substance classified in Schedules I or II, in the course of his legitimate business, except pursuant to an order form as required by Section 67.46;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept by this Act;

(f) to make, distribute, or possess any punch, die, plate, stone or other thing designed to print, imprint, or reproduce the trademark,

trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance.

(b) Any person who violates this section is guilty of a felony of the third degree.

67.58. Any penalty imposed for violation of this Act shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

67.60. Any person who is at least 18 years of age who violates paragraph (1) of subsection (a) of Section 67.50 by distributing a substance listed in Schedules I or II which is a narcotic drug to a person under 18 years of age who is at least three (3) years his junior is guilty of a felony of the first degree. Any person who is at least 18 years of age who violates paragraph (1) of subsection (a) of Section 67.50 by distributing any other controlled substance listed in Schedules I, II, III, and IV to a person under 18 years of age who is at least three (3) years his junior is guilty of an offense of the next higher degree than that provided by paragraph (2) or (3) of subsection (b) of Section 67.50.

67.62. (a) Whenever any person who has not previously been convicted of an offense under this Act or under any statute of the United States or of any State relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection (a) of Section 67.52 the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilty and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the additional penalties imposed for second or subsequent convictions under Section 67.64). Discharge and dismissal under this section may occur only once with respect to any person.

(b) Upon the dismissal of such person and discharge of the proceedings against him under subsection (a), such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the court solely for the purpose of use by the courts in determiing whether or not, in subsequent proceedings, such person qualifies under this section) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines after hearing, that such person was dismissed and the proceedings against him discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

67.64. (a) Any person convicted of any offense under this Act is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both.

(b) For purposes of this section an offense shall be considered a second or subsequent offense, if, prior to the commission of the offense, the offender has at any time been convicted of an offense or offenses under this Act or under any statute of the United States or of any State relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

Article 5. Enforcement and Administrative Provisions

67.70 (a) Any officer designated by the Governor may:

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this territory;

(3) make arrests without warrant for any offense under this act committed in his presence, if he has probable cause to believe that the person to be arrested has committed or is committing or is about to commit a felony;

(4) make seizures of property pursuant to the provisions of this Act; and

(5) perform such other law enforcement duties as the Director of Public Safety or the Director of Public Health and Social Services designate.

67.72. A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant.

67.74. (a) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the Superior Court may, upon proper oath of affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this act or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, 'probable cause' means a valid public interest in the effective enforcement of the Act or regulations sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of an officer or employee duly designated and having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the item or types of property to be seized, if any. The warrant shall be

directed to a person authorized by Section 67.70 to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours except as provided by Section 67.72. It shall designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person executing the warrant. The judge, upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant under this section shall attach to the warrant a copy of the return and all the papers filed in connection therewith and shall file them with the clerk of the court.

(b) The Governor is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this Article only, 'controlled premises' means:

(A) places where persons registered or exempted from registration requirements under this Act are required to keep records; and

(B) places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under this Act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When so authorized by an administrative inspection warrant issued pursuant to subsection (a), an officer or employee designated by the Governor, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, shall have the right to enter controlled premises for the purpose of conducting an administrative inspection.

(3) When so authorized by an administrative inspection warrant, an officer or employee designated by the Governor shall have the right:

(A) to inspect and copy records required by this Act to be kept;

(B) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph (5), all other things therein (including records, files, papers, processes, controls, and facilities) bearing on violation of this Act; and

(C) to inventory any stock of any controlled substance therein and obtain samples of any such substance.

(4) This section shall not be construed to prevent the inspection without a warrant of books and records (including seizures of property):

(A) with the consent of the owner, operator, or agent in charge of the controlled premises;

(B) in situations presenting imminent danger to health or safety;

(C) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) in any other exceptional or emergency circumstances where time or opportunity to apply for a warrant is lacking; and

(E) in all other situations where a warrant is not constitutionally required.

(5) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing no inspection authorized by this section shall extend to:

(A) financial data;

(B) sales data other than shipment date; or

(C) pricing data.

67.76. (a) The Superior Court shall have jurisdiction in proceedings in accordance with the rules of that court to restrain or enjoin violations of this Act.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

67.78. (a) The Governor shall cooperate with Federal and State agencies in discharging his responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he is authorized to:

(1) arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;

(2) coordinate and cooperate in training programs on controlled substance law enforcement at the local and State levels;

(3) cooperate with the Bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within Guam, and make such information available for Federal, State, and local law enforcement purposes. He shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

(4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the Bureau relating to the regulatory functions of this Act, including results of inspections conducted by it may be relied and acted upon by the Governor in the exercise of his regulatory functions under this Act.

(c) A practitioner engaged in medical practice or research is not required to compelled to furnish the name or identity of a patient or research subject to the Governor, nor may he be required or compelled in any territory or local, civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

67.80. (a) The following shall be subject to forfeiture and no property right shall exist in them:

(1) All controlled substances which have been or are intended to be manufactured, distributed, dispensed, acquired or held in violation of the provisions of this Act;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of the provisions of this Act;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) and (2);

(4) All conveyances including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in (1) or (2), except that:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this chapter unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violaton of this Act; and

(B) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of Section 67.52; and

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(5) All books, records, and research including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this Act.

(b) Any property subject to forfeiture under this Act may be seized by the Governor upon process issued by the Superior Court except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in a criminal injunction or forfeiture proceeding based upon this Act;

(3) The Governor has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The Governor has probable cause to believe that the property has been used or intended to be used in violation of this Act.

In the event of seizure pursuant to this subsection, proceedings under subsection (c) shall be instituted promptly.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Governor subject only to the orders and decrees of the court. Whenever property is seized under the provisions of this Act, the Governor may:

(1) Place the property under seal; or

(2) Remove the property to a place designated by him.

(d) Whenever property is forfeited under this Act the Governor may:

(1) Retain the property for official use;

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

(3) Require the property to be taken into custody and removed for disposition in accordance with law; or

(4) Forward it to the Bureau for disposition. Such disposition, may include delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General of the United States.

(e) All substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this Act shall be deemed contraband and seized and summarily forfeited to the government. Similarly, all substances listed in Schedule I which are seized or come into the possession of the government, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the government.

(1) All species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this Act, or which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the government.

(2) The failure, upon demand by the Governor, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

67.82. (a) It shall not be necessary for the government to negate any exemption or exception set forth in this Act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this Act. The burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

67.84. All final determinations, findings and conclusions of the Governor under this Act are final and conclusive decisions of the matters involved. Any person aggrieved by such decision may obtain review of the decision in the Superior Court. Findings of fact by the Governor, if supported by substantial evidence are conclusive.

67.86. (a) The Governor is authorized and directed to carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with such programs he is authorized to:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) Assist in the education and training of law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The Governor shall encourage research on misuse and abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this act he may:

(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Make studies and undertake programs of research to:

(A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this Act,

(B) Determine patterns of misuse and abuse of controlled substances and the social effects thereof, and

(C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and

(3) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The Governor may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of persons who are the subjects of research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are subjects of research for which such authorization was obtained.

(d) The Governor may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization shall be exempt from prosecution for possession and distribution of substances to the extent of the authorization.

CHAPTER 70. MISCELLANEOUS CRIMES

70.10 (a) A person commits petty misdemeanor if he intentionally, knowingly or recklessly:

(1) subjects any animal to cruel mistreatment;

(2) subjects any animal in his custody to cruel neglect; or

(3) kills or injures any animal belonging to another without legal privilege or consent of the owner.

(b) Subsection (a) shall not be applicable to:

(1) accepted veterinary practices and activities carried on for scientific research by public or private schools or universities or medical institutions;

(2) the shooting or taking of game in such manner and at such times as is allowed or provided by the laws of this Territory; or

(3) cockfighting in a manner and at such times and places as are authorized by law.

70.15. (a) A person commits a petty misdemeanor when he:

(1) permits any condition which is injurious to health or any offensive or noxious substance to be maintained upon or within property in his possession or under his control after receiving reasonable notice in writing from the proper authority to terminate that condition; or

(2) unlawfully obstructs the free passage or use of a navigable body of water or a public highway, street, sidewalk, or park by placing any substance therein or thereon.

(b) Permitting the existence of a condition after the receipt of the notice required by paragraph (1) of subsection (a) shall constitute a separate and distinct offense for each and every day after such receipt that the condition exists.

70.20. A person is guilty of a petty misdemeanor when he:

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

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

70.30. (a) Except in case of unavoidable accident, collision, or stranding, and except as otherwise permitted by law, a person commits a misdemeanor if he discharges or permits the discharge of oil by any methods, means, or manner, into or upon the navigable waters of the Territory of Guam from any vessel using oil for the generation of propulsion power, or any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements, and such as may be required under the laws of the United States and the government of the Territory of Guam, and rules and regulations prescribed thereunder.

(b) As used in this section,

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

(2) "navigable waters of the Territory of Guam" means all portions of the sea within the territorial jurisdiction of the government of the Territory of Guam.

70.35. (a) A person commits a misdemeanor if, except as authorized by law, he:

(1) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place;

(2) installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in such place, or uses any such unauthorized installation;

(3) installs or uses outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there;

(4) intercepts without the consent of the sender or receiver a message by telephone, telegraph, letter or other means of communicating privately; but this paragraph does not extend to (A) overhearing of messages through a regularly installed instrument on a telephone party line or on an extension, or (B) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or to other normal operation and use; or

(5) divulges without the consent of the sender or receiver the existence or contents of any message described in paragraph (4) if the defendant knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

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

70.40 (a) A person is guilty of unlawfully using a telephone when he:

(1) refuses to relinquish immediately a partyline or public telephone when informed that the partyline or public telephone is needed for an emergency call to the Department of Public Safety, Armed Services Police, Air Sea Rescue or for medical aid or ambulance service; or

(2) secures the use of a partyline or public telephone by falsely stating that such line or telephone is needed for an emergency.

(b) As used in this section, "partyline" means a subscriber's line telephone circuit consisting of two or more named telephone stations connected therewith, each station having a distinctive ring or telephone number.

(c) As used in this section, "public telephone" means a telephone available for public use.

(d) As used in this section, "emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

(e) Unlawfully using a telephone, as defined in paragraph (a) of subsection (a) of this section, is a misdemeanor. Otherwise, it is a violation.

CHAPTER 80. DISPOSITION OF OFFENDERS

Article 1. General Provisions

80.10. (a) No person convicted of an offense shall be sentenced or otherwise dealt with except as provided by this code.

(b) The court may suspend the imposition of sentence on a person who has been convicted of a crime, in accordance with Section 80.60, may order him to be committed in lieu of sentence, in accordance with Section 80.20, or may sentence him as follows:

(1) to imprisonment for a term authorized by Article 2 (commencing with Section 80.30);

(2) to pay a fine or make restitution as authorized by Section 80.50;

(3) to be placed on probation as authorized by Section 80.60; or

(4) to fine, restitution and probation or fine, restitution and imprisonment.

(c) Where the judgment of conviction includes more than one crime the sentences imposed shall run concurrently, except as provided in Sections 80.38, 80.40 and 80.42.

(d) The court may suspend the imposition of sentence on a person who has been convicted of a violation or may sentence him to pay a fine or make restitution as authorized by Section 80.50.

(e) Nothing in this code deprives the court of any authority otherwise conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

80.12. (a) The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence unless the court otherwise directs for reasons stated on the record.

(b) The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(c) The report of such investigation shall be in writing and so far as practicable shall include an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, social economic and education background, job experience and occupational skills and aptitude, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included.

(d) Before making disposition in the case of a person convicted of a felony or misdemeanor, the court may order the offender to submit to psychiatric observation or examination. The offender may be committed for this purpose for a period not exceeding twenty days to a facility within or licensed by the Department of Mental Health, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court in writing at such time as the court directs.

(e) If, after presentence investigation, the court desires additional information concerning an offender, it may order that he be committed, for a period not exceeding ninety days, to the custody of the Department of Corrections, for observation and study at an appropriate reception or classification center before making a final disposition in the case. The department shall advise the court of its findings and recommendations on or before the expiration of such ninety-day period. If the offender is thereafter sentenced to imprisonment, the period of such commitment for observation shall be deducted from the maximum term of such sentence.

80.14. (a) The presentence report shall not be a public record. It may be made available only to the sentencing court, to any reviewing court where relevant to an issue on which an appeal has been taken, to any examining facility, correctional institution, probation or parole department for use in the treatment or supervision of the offender and to the parties as provided in this section.

(b) At least two days before imposing sentence the court shall furnish the offender, or his counsel if he is so represented, a copy of the report of the presentence investigation exclusive of any recommendations as to sentence, unless in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the offender or his counsel an opportunity to comment thereon.

(c) If the court is of the view that there is information in the presentence report which should not be disclosed under subsection (b), the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the offender or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(d) Any material disclosed to the offender or his counsel shall at the same time be disclosed to the attorney for the government.

(e) Any copies of the presentence investigation report made available to the offender or his counsel and the attorney for the government shall be returned to the court immediately following the imposition of sentence. Copies of the presentence investigation report shall not be made by the offender, his counsel, or the attorney for the government.

80.16. (a) The court may suspend the imposition of sentence of a corporation which has been convicted of an offense or may sentence it to pay a fine or make restitution authorized by Section 80.50.

(b) When a corporation is convicted of a crime or a high managerial agent of a corporation is convicted of a crime committed in the conduct of the affairs of the corporation, the court, in sentencing the corporation or the agent, may direct the prosecuting attorney to institute civil proceedings in the Superior Court to forfeit the charter of a corporation organized under the laws of this territory or to revoke the certificate authorizing a foreign corporation to conduct business in this territory. In such proceedings, the court may order the charter forfeited or the certificate revoked upon finding (A) that the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, intentionally engaged in a persistent course of criminal conduct and (B) that for the prevention of future criminal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

80.18. Nothing in this chapter shall affect the power of the court to deal with a youth offender as defined by Section 83.15 in the manner provided by Section 83.35.

80.20. (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 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.

(b) The court shall not make an order under subsection (a) unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

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

Article 2. Imprisonment

80.30. (a) Except as otherwise provided by Sections 16.30 and 80.32, a person who has been convicted of a felony may be sentenced to imprisonment, as follows:

(1) in the case of a felony of the first degree, the court shall set a maximum term not to exceed twenty years and may set a minimum term not to exceed five years;

(2) in the case of a felony of the second degree, the court shall set a maximum term not to exceed ten years and may set a minimum term not to exceed three years;

(3) in the case of a felony of the third degree, the court shall set a maximum term not to exceed five years.

(b) The minimum terms authorized by subsection (a) shall not be imposed unless the court, having regard to the nature and circumstances of the offense and the history and character of the offender, finds that such a term is desirable. If a minimum term is imposed, the court shall set forth its reasons in detail and such findings shall set forth its reasons in detail and such findings shall be filed with the Department of Corrections. If a minimum term is imposed, the court shall have the authority to reduce that term upon application by the Department of Corrections made at any time, upon notice to the prosecuting attorney and the board of parole.

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

(1) in the case of a felony of the first degree, for a maximum term of life imprisonment;

(2) in the case of a felony of the second degree, the court shall set a maximum term not to exceed twenty years and may set a minimum term not to exceed five years;

(3) in the case of a felony of the third degree, the court shall set a maximum term not to exceed ten years and may set a minimum term not to exceed three years.

(b) If a minimum term is imposed pursuant to paragraph (2) or (3) of subsection (a), the court shall have the authority to reduce that term upon application by the Department of Corrections made at any time, upon notice to the prosecuting attorney and the board of parole.

80.34. Except as otherwise provided by Section 80.36, a person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment, as follows:

(a) in the case of a misdemeanor, the court shall set a maximum term not to exceed one year;

(b) in the case of a petty misdemeanor, the court shall set a definite term not to exceed sixty days.

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

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

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

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

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

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

(c) The offender is a dangerous, mentally abnormal person whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the offender has been subjected to a psychiatric examination resulting in the conclusions that his mental condition is gravely abnormal; that his criminal conduct has been characterized by a pattern of repetitive or compulsive behavior or by persistent aggressive behavior with heedless indifference to consequences; and that such condition makes him a serious danger to others.

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

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

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

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

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

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

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

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

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

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

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

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

80.46. (a) When an offender who is sentenced to imprisonment has previously been detained in any territorial state or local correctional or other institution, for the conduct for which such sentence is imposed, such period of detention shall be deducted from the maximum and minimum term of such sentence. The officer having custody of the offender shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the offender prior to sentence in any territorial, state or local correctional or other institution, and the certificate shall be attached to the official records of the offender's commitment.

(b) When a judgment of conviction is vacated, or a sentence is revised or reviewed and a new sentence is thereafter imposed upon the offender for the same crime, the period of detention and imprisonment previously served therefor shall be deducted from the maximum and minimum term of the new sentence. The officer having custody of the offender shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be attached to the official records of the offender's new commitment.

80.48. (a) Either the court at the time of sentencing or the Director of Corrections after the offender has been placed in his custody may extend the limits of his confinement to permit the offender to continue in his regular employment or educational program or if the prisoner does not have regular employment or a regular educational program, to secure employment or education. Any employment or education so secured must be suitable for the offender. Such employment or educational program if such educational program includes earnings by the offender, must be at a wage at least as high as the prevailing wage for similar work in the Territory and in accordance with the prevailing working conditions in the Territory. In no event may any such employment or educational program involving earnings by the offender be permitted where there is a labor dispute in the establishment in which the offender is, or is to be, employed or educated. Whenever the offender is not employed or being educated and between the hours or periods of employment or education, he shall be confined in such facility designated by the court or Director of Corrections.

(b) The earnings of the offender may be collected by the Director of Corrections. From such earnings, the Director may deduct such costs incident to the offender's confinement as the Director deems appropriate and reasonable; The Director may also deduct payments for the support of the offender's dependents and forward such payments to them.

(c) In the event, the offender violates the conditions laid down for his conduct, custody, education, or employment the Director (or the court, if the limits of confinement were originally extended by the court) may order the balance of the offender's sentence to be spent in actual confinement subject to any release on parole pursuant to Article 5 (commencing with Section 80.70).

(d) Willful failure of the offender to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement pursuant to this section is punishable as an escape.

80.49. (a) The Director of Corrections may extend the limits of the place of confinement of a prisoner entrusted to his custody as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to visit a specifically designated place or places for a period not to exceed twenty-four hours and return to the institution. An extension of limits may be granted only to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services not otherwise available, or for any other compelling reason consistent with the public interest.

(b) Willful failure of the offender to return to the place of confinement within the time prescribed pursuant to this section is punishable as an escape.

Article 3. Fines and Restitution

80.50. A person who has been convicted of an offense may be sentenced to pay a fine or to make restitution not exceeding:

(a) $10,000, when the conviction is of a felony of the first or second degree;

(b) $5,000, when the conviction is of a felony of the third degree;

(c) $1,000, when the conviction is of a misdemeanor;

(d) $500, when the conviction is of a petty misdemeanor or violation;

(e) any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term "gain" means the amount of money or the value of property derived by the offender and the term "loss" means the amount of value separated from the victim.

(f) any amount specifically authorized by statute.

The restitution ordered paid to the victim shall not exceed his loss.

80.52. (a) The court shall not sentence an offender only to pay a fine or to make restitution, when any other disposition is authorized by law, unless having regard to the nature and circumstances of the offense and to the history and character of the offender, it is of the opinion that the fine or restitution alone is appropriate and suffices for the protection of the public.

(b) The court shall not sentence an offender to pay a fine or make restitution in addition to a sentence of imprisonment or probation unless:

(1) the offender has derived a pecuniary gain from the offense, or

(2) the court believes that a fine or restitution is specially adapted to deterrence of the type of offense involved or to the correction of the offender.

(c) The court shall not sentence an offender to pay a fine or make restitution unless the offender is or, given a fair opportunity to do so, will be able to pay the fine or restitution. The court shall not sentence an offender to pay a fine unless the fine will not prevent the offender from making restitution to the victim of the offense.

(d) In determining the amount and method of payment of a fine or restitution, the court shall take into account the financial resources of the offender and the nature of the burden that its payment will impose.

(e) When an offender is sentenced to pay a fine or to make restitution,the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid. The response of the court to non-payment shall be determined only after the fine has not been paid and as provided in Section 80.56.

80.54. (a) When an offender is sentenced to pay a fine or to make restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine or restitution shall be payable forthwith.

(b) When an offender sentenced to pay a fine or make restitution is also sentenced to probation, the court may make the payment a condition of probation.

(c) The offender shall pay a fine, restitution or any installment thereof to the court. In the event of default in payment, the Attorney General shall take appropriate action for its collection.

(d) Unless otherwise provided by law, all fines collected shall be paid over to the Treasurer of the Territory of Guam and shall become part of the general funds of the Territory and shall be subject to general appropriation.

80.56. (a) When an offender sentenced to pay a fine or make restitution defaults in the payment thereof or of any installment, the court, upon the motion of the Attorney General or upon its own motion, may require him to show cause why his default should not be treated as contumacious and may issue a summons or a warrant of arrest for his appearance. Unless the offender shows that his default was excusable, the court shall find that his default was contumacious and may order him committed until the fine or restitution or a specified part thereof is paid. The term of imprisonment for such contumacious non-payment of the fine or restitution shall be specified in the order of commitment and shall not exceed one day for each ten dollars of the fine or restitution, thirty days of the fine or restitution was imposed upon conviction of a violation or a petty misdemeanor or one year in any other case, whichever is the shorter period. When a fine or restitution is imposed on a corporation or an unincorporated association it is the duty of the person or persons authorized to make disbursements from the assets of the corporation or association to pay it from such assets and their failure so to do may be held contumacious under this subsection. A person committed for non-payment of a fine or restitution shall be given credit towards its payment for each day of imprisonment, at the rate specified in the order of commitment.

(b) If it appears that the offender's default in the payment of a fine or restitution is not contumacious, the court may make an order allowing the offender additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or restitution or the unpaid portion thereof in whole or in part.

(c) Upon any default in the payment of a fine or restitution or any installment, thereof, execution may be levied and such other measures may be taken for the collection of the fine or restitution or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the offender in an action on a debt. The levy of execution for the collection of a fine or restitution shall not discharge an offender committed to imprisonment for non-payment until the amount of the fine or restitution has actually been collected.

80.58. An offender who has been sentenced to pay a fine and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for a revocation of the fine or of any unpaid portion thereof. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the fine or the unpaid portion thereof in whole or in part.

Article 4. Probation

80.60. (a) the Court in its discretion may make disposition in respect to any person who has been convicted of a crime without imposing sentence of imprisonment.

(b) Notwithstanding subsection (a) the court shall not suspend imposition of sentence or place an offender on probation if, having due regard to the nature and circumstances of the crime and the history, character and condition of the offender, the court finds that imprisonment is necessary for the protection of the public because:

(1) there is undue risk that during the period of a suspended sentence or probation the offender would commit another crime;

(2) the offender is in need of correctional treatment that can be provided most effectively by commitment to an institution; or

(3) a lesser sentence would depreciate the seriousness of the offender's crime.

(c) The following factors, while not controlling, shall be accorded weight in determining whether to suspend imposition of sentence or to place the offender on probation: whether

(1) the offender's criminal conduct neither caused nor threatened serious harm;

(2) the offender did not contemplate that his criminal conduct would cause or threaten serious harm;

(3) the offender acted under a strong provocation;

(4) there were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish a defense;

(5) the victim of the offender's criminal conduct induced or facilitated its commission;

(6) the offender has compensated or will compensate the victim of his criminal conduct for the damage or injury which was sustained;

(7) the offender has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(8) the offender's criminal conduct was the result of circumstances unlikely to recur;

(9) the history, character and attitudes of the offender indicate that he is unlikely to commit another crime;

(10) the offender is particularly likely to respond affirmatively to probationary treatment;

(11) the imprisonment of the offender would entail excessive hardship to himself or his dependents;

(d) If a person who has been convicted of a crime is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance or direction that probation can provide.

80.62. (a) If the court suspends the imposition of sentence or places an offender on probation, it shall attach such reasonable conditions, authorized by this section, as it deems appropriate to assist him to lead a law-abiding life.

(b) The court, as a condition of its order, may require the offender

(1) to support his dependents and to meet his family responsibilities;

(2) devote himself to an approved employment or occupation;

(3) to undergo available medical or psychiatric treatment and to enter and remain in a specified institution when required for that purpose;

(4) to pursue a prescribed secular course of study or vocation training;

(5) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;

(6) to refrain from criminal conduct or from frequenting unlawful places or consorting with specified persons;

(7) to refrain from possessing any firearm or other dangerous weapon;

(8) to pay any fine authorized by this chapter;

(9) to make restitution of the fruits of his crime or to make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;

(10) to remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;

(11) to refrain from excessive use of alcohol and drug abuse;

(12) to report as directed to the court or the probation officer, to answer all reasonable inquiries by the probation officer and to permit the officer to visit him at reasonable times at his home or elsewhere;

(13) to satisfy any other conditions reasonably related to the rehabilitation of the offender or public safety or security.

(c) The offender shall be given a statement in writing explicitly setting forth the conditions on which he is released on probation.

80.64. (a) If the court has suspended imposition of sentence or has placed an offender on probation, the period of the suspension or probation shall not exceed five years for a felony, two years for a misdemeanor or petty misdemeanor and one year for a violation.

[illegible] the conditions to which the offender is presently subject.

Prior to modification the offender shall be given notice and a reasonable opportunity to be heard regarding any change in the conditions. All changes in conditions shall be given to the offender in writing.

(c) Any conditions imposed pursuant to Section 80.62 shall automatically terminate upon the successful completion of the period of suspension or probation set by the court. The sentencing court may order an earlier termination whenever it appears that further continuation of conditions or supervision or enforced compliance with the terms of probation is unnecessary. Upon termination, an order of termination shall be rendered by the court and entered by the clerk in the minutes and copy thereof mailed to the offender.

80.66. (a) At any time before the discharge of the offender or the termination of the period of suspension or probation:

(1) upon a showing of probable cause that an offender has violated a condition of his suspension or probation, the court may summon the offender to appear before it or may issue a warrant for his arrest. The warrant or summons shall be served in the manner provided by Section 15.70 of the Criminal Procedure Code. The offender may be arrested without a warrant only in those circumstances where such an arrest is otherwise permitted by law;

(2) the court, if satisfied that the offender has inexcusably failed to comply with a substantial requirement imposed as a condition of the order may revoke the suspension or probation and sentence or re-sentence the offender. Violation of a condition shall not result in revocation, however, unless the court determines that revocation under all the circumstances then existing will best satisfy the ends of justice and the best interests of the public.

(b) When the court revokes a suspension or probation, it may impose on the offender any sentence that might have been imposed originally for the crime of which he was convicted.

80.68. (a) The court shall not revoke a suspension or probation or increase the requirements imposed thereby on the offender except after a hearing upon written notice to the offender of the grounds on which such action is proposed. The offender shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel.

(b) Pending the hearing required by subsection (a), the offender may be released in the manner and subject to the conditions prescribed by Chapter 40 (commencing with Section 40.10) of the Criminal Procedure Code. However, if there is probable cause to believe that the offender has committed another crime or if he has been held to answer therefor, the court may commit him without bail, pendng a determination of the charge by the court having jurisdiction thereof.

Article 5. Parole

80.70. (a) An offender sentenced to an indefinite term of imprisonment under Sections 80.30, 80.32, 80.34 or 80.36 shall be released conditionally on parole at or before the expiration of such term, in accordance with the provisions of this article.

(b) A sentence to an indefinite term of imprisonment under Sections 80.30, 80.32, 80.34 or 80.36 includes as a separate portion of the sentence a term of parole or of recommitment for violation of the conditions of parole which governs the duration of parole or recommitment after the offender's first conditional release on parole. The term is three years, unless the conviction was for a misdemeanor in which case it is one year.

(c) If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the Territorial Parole Board but shall not exceed in length the longer of the unserved balance of (1) the parole term provided by subsection (b) or (2) the remainder of the original sentence determined from the date of conviction.

(d) When the parole term has expired or he has been sooner discharged from parole, an offender shall be deemed to have served his sentence and shall be released unconditionally.

80.71. As used in this article, "board" means the "Territorial Parole Board."

80.72. (a) Every person confined in a territorial penal or correctional institution shall be eligible for release on parole at any time after the service of any minimum term fixed by the court, or in the case of a person sentenced to life imprisonment, after such person has been confined for ten years.

(b) The board shall consider the desirability of parole of each inmate as soon as practicable after his confinement in a territorial institution, but in no case later than six months after his confinement, except in the case of a sentence to a minimum term or to life imprisonment in which case he shall be considered at least sixty days prior to his first eligibility. Following such consideration, the board shall issue a formal order granting or denying parole. If parole is denied, the board shall state in its order the reasons therefor and the approximate date of next consideration. The board need not state any reasons for denial if to do so would impair a course of rehabilitative treatment of the inmate. The board shall reconsider its decision at least once every year thereafter until parole is granted.

(c) This section shall apply to all persons now incarcerated in any territorial penal and correctional institution. The board may, however, delay for a reasonable time consideration required by subsection (b) of present inmates whose eligibility has been accelerated by subsection (a). The board shall promulgate procedures to implement this subsection and shall notify affected inmates of their new parole consideration hearing dates.

80.74. (a) Each prisoner in advance of his parole hearing shall be requested to prepare a parole plan, setting forth the manner of life he intends to lead if released on parole, including such specific information as to where and with whom he will reside and what occupation or employment he will follow. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of his plan and in securing information for submission to the board.

(b) A prisoner shall be permitted to advise with any persons and use assistance he reasonably desires, including his own legal counsel, in preparing for a hearing before the board.

80.76. (a) Whenever the board considers the release of a prisoner for parole, the board shall order his release, if it is of the opinion that

(1) his release is compatible with public safety and security;

(2) there is a substantial likelihood that he will abide by law and conform to the conditions of parole;

(3) his release at that time would not depreciate the seriousness of his crime nor promote disrespect for law;

(4) his release would not have a substantially adverse effect on institutional discipline: and

(5) his continued correctional treatment, medical care or vocational or other training in the institution will not substantially enhance his capacity to lead a law-abiding life when released at a later date.

(b) In making its determination regarding a prisoner's release on parole, the board may consider, to the extent relevant, the following factors:

(1) the prisoner's personality, including his age and maturity, stability, sense of responsibility and any apparent development in his personality which may promote or hinder his conformity to law;

(2) the prisoner's parole plan;

(3) the prisoner's ability and readiness to assume obligations and undertake responsibilities;

(4) the prisoner's family status and whether he has relatives who display an interest in him or whether he has other close and constructive associations in the community;

(5) the prisoner's employment history, his occupational skills and training, and the stability of his past employment;

(6) the type of home environment in which the prisoner plans to live;

(7) the prisoner's past use of narcotics or other harmful drugs, or past habitual and excessive use of alcohol;

(8) the prisoner's mental and physical make-up, including any disability or handicap which may affect his conformity to law;

(9) the prisoner's prior criminal record, including the nature and circumstances, recentness and frequency of previous offenses;

(10) the prisoner's attitude toward law and authority;

(11) the prisoner's conduct in the institution, including whether he has taken advantage of the opportunities for self-improvement afforded by the institutional program;

[illegible] and attitude during any previous [illegible] parole and the recentness of such [illegible]

§ 78. Before making a determination regarding a prisoner's release on parole, the board shall cause to be brought before it, and it shall be the responsibility of the Department of Corrections or administrative head of the institution in which an offender is held to furnish such of the following records and information regarding the prisoner as may be available:

(a) a report prepared by the institutional parole staff, relating to his personality, social history and adjustment to authority, and including any recommendations which the institutional staff may make;

(b) all official reports of his prior criminal record, including reports and records of earlier probation and parole experiences;

(c) any pre-sentence investigation report of the sentencing court;

(d) any recommendations regarding his parole made at the time of sentencing by the sentencing judge or the prosecutor;

(e) the reports of any physical and mental examinations of the prisoner;

(f) any relevant information which may be submitted by the prisoner, the victim of his crime, or by other persons;

(g) the prisoner's parole plan;

(h) the record of his conduct while imprisoned;

(i) such other relevant information concerning the prisoner as may be reasonably available.

§ 80. (a) If a prisoner is released on parole, the board shall require as a condition of his parole that he refrain from engaging in criminal conduct. The board may also require, as a condition of parole, either at the time of his release on parole or at any time and from time to time while he remains under parole, that he:

(1) support his dependents and meet other family responsibilities.

(2) devote himself to an approved employment or occupation;

(3) remain within the geographic limits fixed in his certificate of parole, unless granted written permission to leave such limits;

(4) report, as directed, upon his release to his parole officer at such regular intervals as may be required, answer all reasonable inquiries by the parole officer, and permit the officer to visit him at reasonable times at his home or elsewhere;

(5) reside at any place fixed in his certificate of parole and notify his parole officer of any change in his address or employment;

(6) reside in a boarding home, hospital, or other parole residence facility, for such period and under such supervision or treatment as the board may deem appropriate;

(7) refrain from possessing firearms or other dangerous weapons;

(8) submit himself to available medical or psychiatric treatment;

(9) refrain from associating with persons known to him to be engaged in criminal activities or, without permission of his parole officer, with persons known to him to have been convicted of a crime;

(10) pay a fine imposed by the court as provided in this chapter;

(11) satisfy any other conditions reasonably related to his rehabilitation or to the public safety and security.

(b) Before release on parole, a parolee shall be provided with a certificate of parole setting forth the conditions of his parole, and shall sign a statement agreeing to such conditions.

80.82. (a) If the parole officer has probable cause to believe that a parolee has violated a condition of parole, he shall notify the board. After consideration of the records submitted, and after such further investigation as it may deem appropriate, the board may order:

(1) that the parolee receive a reprimand and warning from the board;

(2) that parole supervision and reporting be intensified;

[illegible] be arrested on this warrant and returned to [illegible] jail, lockup, or any other correctional institution, pending a preliminary determination by the board as to whether he should be released or held in accordance with the terms of his original commitment. Such determination shall be made without a hearing within fifteen days of such arrest. If the determination is made that he be held in accordance with the terms of his original commitment, he shall be so held, pending a hearing pursuant to Section 80.84 to determine whether his parole should be revoked.

(5) that the parolee be arrested and held forthwith in accordance with the terms of his original commitment to await a hearing pursuant to Section 80.84 to determine whether his parole should be revoked.

(b) If a parole officer has probable cause to believe that a parolee has violated or is about to violate a condition of parole and that an emergency situation exists, so that awaiting determination by the board would create an undue risk to the public or to the parolee, the parole officer may arrest the parolee or cause him to be arrested, with or without first issuing a warrant for his detention, and may call on any law enforcement officer to assist in the arrest. The parolee shall thereupon be detained on the written order or warrant of the parole officer in a local jail, lockup, or other detention facility, pending action by the board of parole. Immediately after such arrest and detention, the parole officer concerned shall notify the board and submit a written report of the reason for such arrest. Thereupon the board may order the release of the parolee or take such action as is authorized in subsection (a) with respect to parolees arrested under its warrant.

80.84. (a) If a parolee has been ordered held in accordance with the terms of his original commitment pursuant to Section 80.82, the board shall hold a hearing within sixty days of such order to determine whether his parole should be revoked. The parolee shall have reasonable written notice of the violation charged. The institutional parole staff shall render reasonable aid to the parolee in preparation for the hearing and he shall be permitted to advise with his own legal counsel. At the hearing the parolee may admit, deny, or explain the violation charged, and may present evidence, including affidavits, in mitigation or explanations.

(b) The board may by majority vote of its members order revocation of parole if it is satisfied that:

(1) the parolee has failed, without a satisfactory excuse, to comply with a requirement imposed as a condition of his parole; and

(2) the violation of condition involves;

(A) the commission of another crime;

(B) behavior indicating a substantial risk that the parolee will commit another crime; or

(C) behavior indicating that the parolee is unwilling or unable to comply with the conditions of parole.

(c) The failure by the board to hold a hearing within sixty days, as required by subsection (a), shall not be a ground for release of the offender, but his right to such a hearing may be enforced by a judge of the superior court by court order after a hearing.

80.86. (a) A parolee whose parole is revoked for violation of the conditions of parole shall be recommitted for the term provided by subsection (c) of Section 80.70 after credit thereon for the period served on parole prior to the violation.

(b) A parolee whose parole has been revoked may be considered by the board for re-parole at any time. He shall be considered for a re-parole not more than six months after confinement.

(c) Persons recommitted for violation of parole prior to the effective date of this section shall, with their consent, have their maximum term of imprisonment recomputed in accordance with subsection (a), or set at six months following the operative date of this section, whichever period shall be longer. All such persons shall be considered by the board for re-parole in accordance with subsection (b). The remaining period of incarceration eliminated from the person's sentence shall constitute a term of parole.

80.88. (a) The board may by written order relieve a prisoner on parole from making further reports to his parole officer, and may in writing permit such prisoner to leave the territory and reside elsewhere if satisfied that such change of residence is for the best interest of society and the welfare of the prisoner. Any such permission may be revoked by the board in its discretion.

[illegible]

[illegible] of parole becomes mandatory upon completion of the [illegible] parole term.

CHAPTER 82. LOSS AND RESTORATION OF RIGHTS INCIDENT TO CONVICTION OR IMPRISONMENT

82.10. (a) No person shall suffer any legal disqualification or disability because of his conviction of a crime or his sentence on such conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is:

(1) necessarily incident to execution of the sentence of the court;

(2) provided by this code;

(3) provided by a statute other than this code, when the conviction is of a crime defined by such statute; or

(4) provided by the order or regulation of an agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived.

(b) Proof of a conviction as relevant evidence upon the trial or determination of any issue, or for the purpose of impeaching the convicted person as a witness is not a disqualification or disability within the meaning of this chapter.

82.15. (a) A person holding any public office who is convicted of a crime shall forfeit such office if:

(1) he is convicted under the laws of this territory of a felony or under the laws of another jurisdiction of a crime which, if committed within this territory, would be a felony; or

(2) he is convicted of a crime involving malfeasance in such office, or dishonesty.

(b) The forfeiture provided in subsection (a) shall take effect upon sentencing unless the sentencing court or an appellate court, for good cause show, orders a stay of such forfeiture. If the conviction is reversed, the person shall be restored to his office with all the rights, emoluments and salary thereof from the date of forfeiture.

82.20. Notwithstanding any other provision of law, a person who is convicted of a crime shall be disqualified:

(a) from voting in a primary or general election if and only so long as he is committed under a sentence of imprisonment; and

(b) from serving as a juror until he has satisfied his sentence.

82.25. (a) The board of parole may remove any disability or disqualification imposed by law on a person found guilty of crime, if such person has completed the maximum term of his sentence or completed a period of suspension or probation as provided by Section 80.64 or been discharged from parole pursuant to Section 80.88, on petition of such person and under the terms of this section.

(b) A person seeking removal of disabilities or disqualifications under this section shall petition the board therefor. The board shall thereupon cause a copy of such petition to be sent to the Attorney General, Director of Public Safety, and the sentencing judge. Within six weeks of the receipt of the copy of such petition, the appropriate officials may make written recommendations or comments regarding the petition to the board, but failure to make such response shall not stop the procedure in the case. The board shall also cause to be brought before it all available presentence and probation reports and records of the department of corrections and of the board of parole regarding the petitioner. The board in its discretion may hold a hearing on such petition at which it may interview the petitioner and consider such matters as it deems appropriate.

(c) Within six months, the board shall determine whether to exercise its discretion to remove any disqualification or disability on the petitioner, and if it does so act, shall issue a certificate of such removal to the petitioner.

(d) The removal of disqualifications or disabilities shall not constitute a pardon nor preclude any person from taking into consideration the fact that the petitioner has been found guilty of a crime where such fact may previously lawfully have been considered.

[illegible]

(a) "Board" means the Territorial Parole Board.

(b) "Department" means the Department of Corrections.

(c) "Director" means the Director of the Department of Corrections.

(d) "Youth offender" means a person of at least eighteen years of age and under the age of twenty-five at the time of conviction. It also means any person certified by the juvenile court for prosecution under Section 255 of the Code of Civil Procedure. It shall not mean a person convicted of an offense punishable by life imprisonment.

(e) "Committed youth offender" is one committed for treatment hereunder to the custody of the Director pursuant to subsection (b) of Section 83.35.

(f) "Treatment" means corrective and preventive guidance and training designed to protect the public by correcting the anti-social tendencies of youth offenders.

(g) "Conviction" means the judgment on a verdict or finding of guilty or a plea of guilty, or a plea of nolo contendere.

83.20. The Board shall hold meetings to consider problems of treatment and correction, to consult with, and make recommendations to the Director with respect to general treatment and correction policies for committed youth offenders, and to enter orders directing the release of such youth offenders conditionally under supervision and the unconditional discharge of such youth offenders, and take such further action and enter such other orders as may be necessary or proper to carry out the purposes of this chapter.

83.25. The Governor shall appoint such supervisory and other officers and employees as may be necessary to carry out the purposes of this chapter. Probation officers shall perform such duties with respect to youth offenders on conditional release as the Board shall request.

83.30. The Board shall, with the approval of the Governor, make such rules as it deems necessary to carry out the intent of the provisions of this chapter and to enable it to exercise the powers and perform the duties conferred upon it.

83.35. (a) If a court is of the opinion that a youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Director for treatment and supervision pursuant to this chapter until discharged by the Board as provided in subsection (c) of Section 83.70, or

(c) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b), then the court may sentence the youth offender under any other applicable penalty provision.

(d) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsection (b), it may order that he be committed to the custody of the Director for observation and study. Within sixty days from the date of the order, or such additional period as the court may grant, the Director shall report to the court his findings.

83.40. Committed youth offenders not conditionally released shall undergo treatment in a correctional institution providing the essential varieties of treatment.

83.45. No youth offender shall be committed to the Director under this chapter until the Director shall certify to the court that proper and adequate treatment facilities and personnel have been provided.

83.50. The Director may with the approval of the Board contract with any appropriate public or private agency not under his control for the custody, care, subsistence, education, treatment, and training of committed youth offenders within the Territory of Guam.

[illegible] such study shall be [illegible] within a [illegible] thirty days. The institution shall promptly forward to the [illegible] and to the Board a report of its findings with respect to the [illegible] offender and its recommendations as to his treatment. At least [illegible] member of the Board shall, as soon as practicable after commitment, interview the youth offender, review all reports concerning him, and make such recommendations to the Director and to the Board as may be indicated.

83.60. On receipt of the report and recommendations from the correctional institution, the Director may with the approval of the Board:

(a) Release the committed youth conditionally under supervision;

(b) Allocate and direct the transfer of the committed youth offender to an agency or institution for treatment;

(c) Order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public; or

(d) Transfer at any time a committed youth offender from one agency or institution to any other agency or institution.

83.65. The Director shall cause periodic examinations and re-examinations to be made of all committed youth offenders and shall report to the Board as to each such offender as the Board may require.

The probation officers and supervisory agents shall likewise report to the Board respective youth offenders under their supervision as the Board may direct.

83.70. (a) The Board may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender. When, in the judgment of the Director a committed youth offender should be released conditionally under supervision, he shall so report and recommend to the Board.

(b) The Board may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

(c) A youth offender committed under subsection (b) of Section 83.35 shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction.

(d) Any other provision of law notwithstanding, a youth offender shall be discharged unconditionally on or before the expiration of the maximum sentence provided by law for the offense for which the youth offender is convicted or certified for prosecution.

83.75. The Board may revoke or modify any of its previous orders respecting a committed youth offender except an order of unconditional discharge.

83.80. Committed youth offenders permitted to remain at liberty under supervision or conditionally released shall be under the supervision of the probation officers, supervisory agents appointed by the Governor, and voluntary supervisory agents approved by the Board. The Board is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by regulations adopted by the Board.

83.85. If, at any time before the unconditional discharge of a committed youth offender, the Board is of the opinion that such youth offender will be benefitted by further treatment in an institution or other facility the Board may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youth offender and cause such warrant to be executed by a probation officer, an appointed supervisory agent or any officer of the Department. Upon return to custody, such youth offender shall be given an opportunity to appear before the Board. The Board may then at its discretion revoke the order of conditional release.

83.90. Upon the unconditional discharge by the Board of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the Board shall issue to the youth offender a certificate to that effect.

[illegible] chapter shall be construed in any way to [illegible] the provisions of Chapter 1 (commencing with [illegible] Title V of Part 1 of the Code of Civil Procedure, or [illegible] section of the Juvenile Court in the administration and [illegible] ement of that chapter.

(c) Nothing in this chapter shall be construed as repealing or modifying the duties, powers, or authority of the Territorial Parole Board with respect to the parole of prisoners not held to be committed youth offenders.

CHAPTER 85. TERRITORIAL PAROLE BOARD

85.10. There is in the Executive branch of the government of Guam a "Territorial Parole Board" hereinafter referred to as "the Board," consisting of five (5) members appointed by the Governor, by and with the advice and consent of the Legislature. Only persons who by their knowledge and experience are prepared to perform efficiently the duties of the Board as hereinafter provided shall be eligible to such appointment.

85.14. The Governor shall appoint one of the members of the Board as chairman. The Board shall meet regularly at least once a month. Special meetings may be called by the chairman.

85.18. The terms of office for the members shall be four (4) years, and until their successors are appointed and have qualified. A vacancy occurring before expiration of the term of office shall be filled for the unexpired portion thereof.

85.22. Members of the Board shall receive no compensation for their service while on the Board; provided, however, that they shall be reimbursed for reasonable travel and out-of-pocket expenses incurred in the performance of Board duties as certified by the Treasurer of Guam.

85.26. The Board is authorized to release on parole any person confined in any penal or correctional institution of this territory and to revoke parole or discharge from parole any parolee as provided in Article 5 (commencing with Section 80.70) of Chapter 80. The Board may adopt such rules and procedures not inconsistent with law as it may deem proper or necessary to carry out its duties.

85.30. Upon approval of a majority of its members, the Board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by any member of the Board. Subpoenas so issued may be served by any police, parole or probation officer, or other law enforcement officer, in the same manner as similar process in the Superior Court. Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before a court is subject. The Superior Court, upon application of the Board, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before such court.

85.34. The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

85.38. The Board shall keep a record of its acts, and shall notify each institution of its decisions relating to the persons who are or have been confined therein. At the close of each fiscal year the Board shall submit to the Governor a report with statistical and other data of its work.

85.50. The probation officer and assistant probation officers appointed pursuant to Section 200 of the Code of Civil Procedure shall also serve as parole officers in administering the provisions of this code.

85.54. The parole officer shall:

(a) be responsible for investigation, supervision and reports as may be requested by the Board;

(b) formulate methods of supervision, record keeping and reports;

(c) furnish to each person released under his supervision a written statement of the conditions of parole and instruct such person as to the same;

(d) keep informed of the conduct and condition of each person under his supervision and use all suitable methods to aid and encourage them and to bring about improvement in their conduct and condition;

(e) keep detailed records of his work.

[illegible] Secretary for [illegible] administrative personnel as are [illegible] this chapter.

[illegible] All information obtained in the discharge of official [illegible] any employee appointed pursuant to this chapter shall be [illegible] and shall not be disclosed directly or indirectly to anyone [illegible] than to the Board, or others entitled under this code to receive [illegible] information, unless and until otherwise ordered by the Board.

85.68. The Board, with the written consent of the Governor, shall have the power and duty to accept from the United States of America or any of its agencies, such advisory services, funds, equipment and supplies as may be made available to this territory for any of the purposes contemplated by this chapter, and to enter into such contracts and agreements with the United States or any of its agencies as may be necessary, proper and convenient, not contrary to the laws of this territory.

85.72. When a prisoner is placed on parole, he shall receive from the territory civilian clothing and transportation to the place in the Territory of Guam in which he is to reside. At the discretion of the Board, the prisoner may be advanced such sum for his temporary maintenance as said Board may allow, not to exceed twenty-five dollars ($25.00), from a fund which shall be provided for use of the Board for this purpose.

CHAPTER 90. CORRECTIONS

Article 1. Department of Corrections

90.10. As used in this chapter:

(a) "Director" means the Director of Corrections.

(b) "Department" means the Department of Corrections.

90.15. The Department shall protect the public from the destructive action of law offenders through control and rehabilitation. It shall provide staff services for the judiciary, the Parole Board, probation officials and interested agencies of the Executive Branch.

90.20. There is hereby established the Corrections Advisory Council, composed of the Chairman of the Territorial Parole Board, the Chief Judge of the Superior Court, the Administrator of Social Services or his representative, the Principal of the Trade and Technical School or his representative, the United States Attorney or his representative and, in addition, one representative from the business community and one member from the general public, who shall be appointed by the Governor with the advice and consent of the Legislature. The Director of the Department shall be ex officio secretary of the Council and the Department shall furnish necessary logistic support. The Council shall advise the Director and the Department as to the policies and procedures to carry out the intent and purposes of this chapter.

90.25. The Director shall establish and operate correctional institutions, and other places of confinement, for prisoners serving sentences of imprisonment imposed by the Courts of Guam and other authorized prisoners, and other persons placed in the custody of the Director, pursuant to the laws of Guam.

90.27. In the event that a court of competent jurisdiction finds that a facility used to detain persons charged with a crime is inadequate, the court may direct the Director hold such persons in his custody. Such persons shall be detained in an area separate and apart from those persons who have been convicted of a crime and are serving sentences of imprisonment.

90.30. The Director subject to the approval of the Governor by Executive Order, is authorized to make rules and regulations for the administration of correctional institutions and other places of confinement, including, but not limited to, necessary disciplinary measures for inmates thereof and for their treatment, care, labor, rehabilitation and information.

90.35. (a) The Director may establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each such division or organizational unit shall be subject to the supervision and direction of the Director and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the Director or otherwise by applicable laws.

(b) The Director may appoint and rename officers and other employees within the Department in accordance with the provisions of the Personnel and Compensation Law, Title V (commencing with Section 4000) of the Government Code.

(c) The Director may delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.

90.40. As head of the Department, the Director:

(a) Shall administer the Department.

(b) Shall exercise and discharge the powers and duties of the Department through such divisions, or other organizational units as he may establish pursuant to this chapter or as otherwise provided by law.

(c) May formulate and adopt rules necessary or proper for the internal administration of the Department, subject to the approval of the Governor.

Article 2. Western Interstate Corrections Compact

90.50. The purpose of this article is to enact enabling legislation for the enactment of the Western Interstate Corrections Compact, hereinafter referred to as the "Compact." This article may be cited as the "Western Interstate Corrections Compact Enabling Act."

90.52. The Compact as contained herein is hereby enacted into law and entered into on behalf of the Territory of Guam with any and all states legally joining therein in a form substantially as follows:

Western Interstate Corrections Compact

ARTICLE I

Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this Compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II

Definitions

As used in this Compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this Compact in which conviction was had.

(c) "Receiving state" means a state party to this Compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to, or confined in, a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

ARTICLE III

Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

[illegible] completion of construction of any [illegible] thereto by a party state, any other party state or [illegible] contract therewith for the enlargement of the planned [illegible] the institution or addition thereto, or for the inclusion [illegible] particular equipment or structures, and for the reservation of [illegible] percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this Compact shall be a part of any contract entered into by the authority of, or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this Compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this Compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this Compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and to final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

[illegible] be released [illegible] inmate, and the [illegible] in some other [illegible] such return to its [illegible]

[illegible] inmate confined pursuant to the terms of this Compact [illegible] all rights to participate in and derive any benefits or [illegible] be relieved of any obligations or have such obligations [illegible] or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this Compact.

ARTICLE V

Acts not Reviewable in Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this Compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected to having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this Compact through any and all states party to this Compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this Compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

Federal Aid

Any state party to this Compact may accept Federal aid for use in connection with any institution or program, the use of which is or may be affected by this Compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this Compact may participate in any such Federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor:

ARTICLE VII

Entry Into Force

This Compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington, and to Guam. Thereafter, this Compact shall enter into force and become effective and binding as to any other and of said states, or any other state contiguous to at least one party to this Compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII

Withdrawal and Termination

This Compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the Compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this Compact.

ARTICLE IX

Other Arrangements Unaffected

Nothing in this Compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

Construction and Severability

The provisions of this Compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

90.54. The Director of Corrections may commit or transfer any inmate of a penal institution under his responsibility to any institution without Guam if the Territory of Guam has entered into a contract or contracts for the confinement of inmates in such institution pursuant to Article III of the Compact.

90.56. The courts, departments, agencies and officers of this territory shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the Compact.

90.58. The Director of Corrections is hereby authorized and directed to hold such hearings as may be requested by any party state pursuant to Article IV(f) of the Compact.

90.60. The Governor is hereby empowered to enter into such contracts as may be appropriate to implement the participation of the Territory of Guam in the Compact pursuant to Article III thereof.

90.62. Where the inmate of an institution within Guam is committed or transferred to any institution outside Guam pursuant to Section 90.54, and if such inmate is discharged in the receiving state by agreement pursuant to Article (V(g) of the Compact, where such inmate is a permanent resident of Guam the return transportation of such inmate to Guam shall be furnished by the Territory of Guam.

90.64. The provisions of this article shall be severable and if any phrase, clause, sentence, or provision of the article is declared to be invalid or the applicability thereof to any state, agency, person or circumstance is held invalid, the validity of this article and the applicability thereof to any other state, agency, person or circumstance shall with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this article be reasonably and liberally construed.

90.66. This article shall become effective upon the enactment of consent legislation by the United States Congress in accordance with Article VII of the Compact.

Article 3. Interstate Compact on Juveniles

90.80. The purpose of this article is to enact enabling legislation for the Interstate Compact on Juveniles, hereinafter referred to as the 'Compact'. This article may be cited as the 'Interstate Compact on Juveniles Enabling Act'.

90.82. The Governor of Guam is hereby authorized to execute and enter into a Compact on behalf of the Territory of Guam with any and all states, territories, Trust Territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico legally joined therein in a form substantially as follows:

ARTICLE I

Finding and Purposes

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public,

[illegible] It shall be the duty of the [illegible] Compact to enforce and observe their respective [illegible] for the prompt return and acceptance of juveniles and [illegible] juveniles who become subject to the provisions of this [illegible]. The provisions of this Compact shall be reasonably and [illegible] construed to accomplish the foregoing purposes.

ARTICLE II

Existing Rights and Remedies

That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III

Definitions

That, for the purposes of this Compact (a) 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court;

(b) 'Probation or parole' means any kind of conditional release of juveniles authorized under the laws of the states party hereto;

(c) 'Court' means any court having jurisdiction over delinquent, neglected or dependent children.

(d) 'State' means any state, territory, and Trust Territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(e) 'Residence' or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV

Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate; and shall be accompanied by two (2) certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made shall hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, after a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provision of law governing records of such court. Upon the receipt

[illegible] away).
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[illegible] judge of a court in the state who shall appoint
[illegible] guardian ad litem for him. If the judge of such court shall
[illegible] the requisition is in order, he shall deliver such juvenile over to
[illegible] officer whom the court demanding him shall have appointed to
receive him. The judge, however may fix a reasonable time to be
allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who shall appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the law of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That 'juvenile' as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor

ARTICLE V

Return of Escapees and Absconders

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile; the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two (2) certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One (1) copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who shall appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

[illegible] pursuant to this Article II, at the time when a state seeks [illegible] of a delinquent who has either absconded while on probation [illegible] or escaped from an institution or agency vested with his legal [illegible] or supervision, there is pending in the state wherein he is [illegible] any criminal charge or any proceeding to have him adjudicated a [illegible] quent juvenile for an act committed in such state, or if he is [illegible] of having committed within such state a criminal offense or [illegible] of juvenile delinquency, he shall not be returned without the [illegible] of such state until discharged from prosecution or other form [illegible] proceeding, imprisonment, detention or supervision for such offense [illegible] juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and identity [illegible] the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI

Voluntary Return Procedure

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without requisition in another state party to this Compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given

by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state to which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return; and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII

Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called 'receiving state') while on probation or parole and the receiving state shall accept such delinquent juvenile if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigation as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

[illegible] the duties of visitation and [illegible] such delinquent juvenile and in the exercise of [illegible] be governed by the same standards of visitation and [illegible] that prevail for its own delinquent juveniles released on [illegible] parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and nor reviewable within the receiving state, provided, however, that if at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII

Responsibility for Costs

(a) That the provisions of Articles IV (B), V (b), and VII (d) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this Compact.

ARTICLE IX

Detention Practices

That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X

Supplementary Agreements

That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI

Acceptance of Federal and Other Aids

That any state party to this Compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this Compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

[illegible] and provisions of this Compact

ARTICLE XIII

Execution of Compact

That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV

Renunciation

That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be the same authority which executed it, by sending six (6) months' notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereto shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six (6) months' renunciation notice of the present Article.

ARTICLE XV

Severability

That the provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters.

ARTICLE XVI

Out-of-State Confinement

(1) This Article, known as the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, is hereby enacted into law and entered into by this territory with all other states legally joining therein in the form substantially as follows:

(a) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(b) Escapees and absconders who could otherwise be returned pursuant to Article V of the Compact may be confined or reconfined in the receiving state pursuant to this Article. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such Article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

(c) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this Article shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

(d) As used in this Article: (1) 'sending state' means sending state as the term is used in Article VII of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the Compact; (2) 'receiving state' means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this Article.

(e) Every state which adopts this Article shall designate at least one of its institutions for delinquent juveniles as a 'Compact Institution' and shall confine persons therein as provided in Paragraph (a) hereof unless the sending and receiving state in question shall make specific [illegible] to the contrary. All states party to this [illegible] have access to 'Compact Institutions' at all reasonable [illegible] the purpose of inspecting the facilities thereof and for the [illegible] of visiting such of said state's delinquents as may be confined [illegible] institution.

(f) Persons confined in 'Compact Institutions' pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said 'Compact Institution' for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.

(g) All persons who may be confined in a 'Compact Institution' pursuant to the provisions of this Article shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this Article be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(h) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this Compact may enter into supplementary agreements determining a different allocation of costs as among themselves.

(i) Rules and regulations necessary to effectuate the terms of this Article may be promulgated by the appropriate officers of those states which have enacted this Article.

(2) In addition to any institution in which the authorities of this territory may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to this Article, confine or order the confinement of a delinquent juvenile in a Compact institution within another party state.

90.84. Pursuant to the Compact the Chief Judge of Superior Court shall be the Compact Administrator and shall promulgate rules and regulations to carry out the terms of the Compact. The Compact Administrator may enter into agreements with appropriate officials of other states or territories pursuant to the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of the territory in facilitating the proper administration of the Compact or of any agreements entered into by the territory thereunder."

Section 2. This code shall become operative on July 1, 1977. Except as otherwise provided in this section, this code does not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purposes of this section, an offense was committed after the operative date of the code if any of the elements of the offense occurred subsequent thereto. In any case pending on or after the operative date of this code, involving an offense committed prior to such date, procedural provisions of this code shall govern insofar as they are justly applicable and their application does not introduce confusion or delay. Provisions of this code governing the treatment and the release or discharge of prisoners, probationers and parolees shall apply to persons under sentence for offenses committed prior to the operative date of this code, except that the minimum or maximum period of their detention shall in no case be increased.

Section 3. This act shall become operative only if Bill Numbers 662 and 663 are chaptered and become operative July 1, 1977, and, in such case shall become operative at the same time as Bill Numbers 662 and 663.

Approved September 2, 1976.