

**9 GCA CRIMES & CORRECTIONS
CH. 90 CORRECTIONS**

**CHAPTER 90
CORRECTIONS**

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2014 NOTE: The following Compiler's Comment was published as an original annotation in the Criminal and Correctional Code (1977), enacted by P.L. 13-185 (Sept. 2, 1976). It was included when the Criminal and Correctional Code (1977) was "recodified" as Title 9 of the Guam Code Annotated pursuant to P.L. 15-104:8 (Mar. 5, 1980), and was retained in past print publications of the GCA. The Comment is included herein for historical purposes:

COMMENT: Article I of Chapter 90 (§§ 90.10 through 90.40) transfers the substance of §§ 55000 through 55013 of the Government Code dealing with, and creating the Department of Corrections. Likewise, Government Code §§ 8800 through 8805 have been incorporated and integrated into this Article. The appropriate sections of the Government Code have been repealed by P.L. 13-187. No changes have been made except to delete certain obsolete transfer sections contained in the Government Code.

§ 90.10. Definitions.

As used in this Chapter:

- (a) *Director* means the Director of Corrections.
- (b) *Department* means the Department of Corrections.

§ 90.15. General Duties of Department of Corrections.

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 officers and interested agencies of the Executive Branch.

§ 90.16. Minimum Qualifications for Department of Corrections Officers.

- (a) Notwithstanding other provisions of law to the contrary, persons appointed as Corrections Officer *shall*:
 - (1) be a resident of Guam and a U.S. citizen;
 - (2) be of good health and good moral character;
 - (3) be over the age of eighteen (18) years;
 - (4) be a high school graduate *or* equivalent, but the POST Commission may set higher academic qualifications

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for all applicants as the Commission considers necessary;

(5) submit to and pass a drug screening test, including, but *not* limited to, a urinalysis test;

(6) submit to psychological testing; and

(7) submit to a polygraph examination.

(b) No person shall be appointed as a Corrections Officer who has *not* established satisfactory evidence of qualifications by passing a physical examination, which *shall* include a physical agility test, and written examinations based upon standards relevant to the duties to be performed, which standards *shall* be established by the Director of Corrections in conjunction with the Department of Administration.

(c) No person shall be appointed as a Corrections Officer who has been convicted in any civilian or military court of a felony, a crime involving moral turpitude, a crime of domestic or family violence, or who has been administratively pardoned of any crime.

(d) No person shall be appointed as a Corrections Officer before a thorough investigation of the applicant's background and moral character is completed.

(e) A Corrections Officer dismissed for cause *shall* be permanently ineligible for reappointment to any position in the Department. A Corrections Officer who resigns for the sole purpose of negating or averting a pending or anticipated disciplinary action to dismiss the Corrections Officer *shall* be ineligible for reappointment.

(f) No person shall be appointed as a Corrections Officer who has *not* established satisfactory evidence of the ability to understand and work with persons with disabilities, including special needs and mental illness. Evidence of such ability *shall* be by a certificate of completion of the appropriate training as approved by the Department of Integrated Services for Individuals with Disabilities, as a condition for selection prior to appointment as a Corrections Officer. For the purpose of this Section, the term disability(ies), as is defined in the *Americans with Disabilities Act*, *shall* mean a physical or mental impairment that substantially limits one (1) or more major life activities of an individual.

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Incumbent uniformed officers who *do not* have a certificate of completion of the training as required in this Act *shall*, within six (6) months following the enactment of this Act, submit to the Department of Administration such certification as required herein.

SOURCE: Added by P.L.31-172:2 (Feb. 3, 2012), effective (120) days from date of enactment pursuant to P.L. 31-172:3.

§ 90.16.1. Annual Corrections Officer Recruits Training Cycle.

(a) The Department of Corrections shall conduct a corrections officer recruits training cycle for at least twenty (20) candidates per fiscal year.

(b) Each year, the Director of the Department of Corrections shall determine the total cost to conduct a recruitment and training cycle pursuant to the requirements set forth in Subsection (a) of this Section and he/she shall transmit this as part of the Department's proposed budget to *I Maga'hagan Guahan* for inclusion in the Executive Budget request that *I Maga'hagan Guahan* submits annually to *I Liheslaturan Guahan*.

(c) The Director of the Department of Corrections shall submit a report to *I Maga'hagan Guahan* and the Speaker of *I Liheslaturan Guahan* no later than June 30 of each year to present an update on the corrections officer recruits training cycle conducted during that fiscal year pursuant to the requirements set forth in this Section.

SOURCE: Added as § 90.50 by P.L. 36-054:XII:42 (Sept. 11, 2021), renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

2021 NOTE: P.L. 36-054:XII:42 (Sept. 11, 2021) added this provision originally numbered as § 90.50; however, there was an existing § 90.50 in Article 2 of Chapter 90, under the Western Interstate Corrections Compact. To avoid confusion, the new provision was renumbered to § 90.16.1.

§ 90.20. Corrections Advisory Council Established.

There is hereby the established Corrections Advisory Council, composed of the Chairman of the Guam Parole Board, the Chief Judge of the Superior Court, the Administrator of Social Services (Director, Public Health and Social Services) or his designee, the Principal of the Vocational & Technical High

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School or his representative, the United States Attorney or his representative and, in addition, one (1) representative from the business community and one (1) member of 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.

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

§ 90.25. Director to Establish Prisons.

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. Prison May Serve as Overflow Lock-Up.

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 to hold such persons in his custody. Such person 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. Rules, Regulations & Disciplinary Rules Authorized.

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 reformation.

§ 90.35. Director to Control Organization of DOC; Appoint Staff.

(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

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Department. Each such division or organizational unit shall be subject to the supervision and discretion 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 Title 4 of the Guam Code Annotated.

(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.

NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to Title VII-A of the Government Code was altered to reflect its codification in the GCA.

§ 90.40. General Duties of Director of Corrections.

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.

§ 90.41. Inmate Commissary.

Notwithstanding any other provision of law, the Department of Corrections (DOC) is authorized to operate or outsource the operation of an inmate commissary within the confines of DOC. This Section *shall* exempt DOC from the provisions of 21 GCA § 60112 in order to provide DOC the authority to lease property to an approved vendor to operate the commissary facility without first seeking legislative approval.

SOURCE: Added by P.L. 35-063:1 (Feb. 11, 2020).

§ 90.42. Operation of Inmate Commissary.

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(a) The Director of DOC may operate, or contract with another person or entity to operate, a commissary for the use of the inmates confined at DOC.

(b) In accordance with 5 GCA Chapter 5 (Guam Procurement Law), the Department of Corrections is authorized to enter into a contract for the lease of up to three hundred (300) square feet of its property for an inmate commissary. Procurement of said contract *shall* be done by a DOC staff member who is qualified under 5 GCA § 5141.

(c) Funds directed as a result of revenue received from the contract under Subsection (b) of this Section *shall* be subject to an annual audit by the Office of Public Accountability.

(d) When entering into a contract under Subsection (a) of this Section, the Director or the Director's designee *shall* consider the following:

(1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;

(2) the menu items offered by the provider and the price of those items;

(3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;

(4) safety and security procedures to be performed by the provider; and

(5) the performance record of the provider, including service availability, reliability, and efficiency.

(e) The Department of Corrections *shall* establish policy and procedures for the administration of this Section. Such policy and procedures *shall* be transmitted to *I Liheslaturan Guåhan* prior to operation of the inmate commissary.

(f) The Department of Corrections *shall* establish rules and regulations for the administration of this Section prior to operation of the inmate commissary.

SOURCE: Added by P.L. 35-063:2 (Feb. 11, 2020).

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§ 90.43. Corrections Commissary Fund.

(a) There is hereby established a Fund to be known as the Corrections Commissary Fund (CCF), which *shall* be maintained separate and apart from other funds of the government of Guam. All funds collected by the government of Guam from the operations of a commissary *shall* be deposited in the CCF; and, interest and investment earnings *shall* be credited to the assets of the CCF and *shall* become part of the CCF. Any remaining balance in the CCF at the end of the fiscal year *shall* be carried over to the next fiscal year.

(b) Inmate Improvement. The Director may use up to fifty percent (50%) of the net proceeds of the CCF to develop or enhance inmate welfare; and the other fifty percent (50%) *shall* be used for rehabilitation programs within the Department of Corrections.

SOURCE: Added by P.L. 35-063:3 (Feb. 11, 2020).

§ 90.44. Inmate Phone Access Act of 2021.

(a) There is hereby created, within the Department of Corrections, a revolving fund called the “Inmate Phone Access Fund” (Fund), which shall be established by the Department of Administration in accordance with the following provisions:

(1) Notwithstanding any other provision of law, any revenue that is collected by the Government of Guam for telephone services within the Guam Department of Corrections shall be deposited into said Fund.

(2) Any revenue that is deposited into said Fund is to be used to provide no-cost telephonic services for indigent inmates or indigent detainees to contact their legal counsel.

(3) Should revenues deposited into this Fund not be adequate to provide no-cost telephonic services for indigent inmates to contact their legal counsel, the Director of the Department of Corrections and *I Maga'hågan Guåhan* shall ensure that any indigent inmate or indigent detainee be provided with their constitutional right to consult legal counsel through no-cost telephonic service by any means that the Director or *I Maga'hågan Guåhan* sees fit.

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(4) For the purposes of this Section, “indigent inmates” or “indigent detainees” shall mean those persons charged in a criminal case before the courts of Guam who are determined indigent consistent with 12 GCA § 11104.

(b) Notwithstanding any other provision of law, within thirty (30) days of the enactment of this Section, the Director of the Department of Corrections shall create and implement a policy where indigent inmates shall be allowed to call the Public Defender Service Corporation, the Alternate Public Defender, or their Attorney of Record, at no cost to the indigent inmate. The Director of the Department of Corrections shall submit a report to *Lihielatura* upon the creation and implementation of said policy.

SOURCE: Added as § 90.50 by P.L. 36-037:2 (July 20, 2021), renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

2021 NOTE: P.L. 36-037:2 (July 20, 2021) added this provision originally numbered as § 90.50; however, there was an existing § 90.50 in Article 2 of Chapter 90, under the Western Interstate Corrections Compact. To avoid confusion, the new provision was renumbered to § 90.44.

§ 90.45. Authorization to Transfer Prisoners to Federal Correctional Institutions.

The Director is authorized to enter into one or more contracts with the Attorney General of the United States pursuant to the authority granted to the Attorney General of the United States by Title 18, United States Code, § 5003, for the custody, care, subsistence, education, treatment and training in one or more Federal correctional institutions, of persons convicted of criminal offenses in the courts of Guam; provided, that any such contract shall provide for the reimbursement of the United States in full for all costs or other expenses incurred by the United States for such custody, care, subsistence, education, treatment and training; and provided further, that the Director shall comply with the relevant provisions of §§ 90.46 through 90.48 inclusive of this Code prior to the physical transfer of any such person to a Federal correctional institution.

SOURCE: Added by P.L. 15-59:1, eff. 08/31/79.

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

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§ 90.46. Emergency Transfers of Inmates.

(a) Existence of correctional emergency. The Director may declare a correctional emergency under the following circumstances:

(1) When the Director determines the existence of conditions which have affected, or in the immediate future will affect, the physical integrity of any correctional institution over which he has jurisdiction or the health or safety of the inmates thereof; and

(2) The effect of such conditions will, in the Director's opinion, be to render such institution unable to provide secure custody and proper care for the inmates thereof. The term 'conditions' as used hereinabove includes, although it is not limited to fire, earthquake, explosion, typhoon, flood, other acts of God and calamitous events and diseases, but it shall not include riot, insurrection or any other disturbance created by the inmates of such institution.

(b) Procedure for Declaration. Whenever the Director determines the existence of a correctional emergency as defined hereinabove, he shall make and execute a short, plain written statement setting forth the nature of such emergency and the basis for his opinion that such emergency will render such institution unable to provide secure custody and proper care for the inmates thereof. Such statement shall be filed in the permanent records of the Department as soon after its execution as is practicable. Copies of such statement shall be delivered to the Parole Board and to the Office of the Attorney General within five (5) calendar days after its execution by the Director.

(c) Transfer of Inmates. Following the declaration of a correctional emergency as provided for hereinabove, the Director may, without further delay, enter into one or more contracts such as those contemplated by §§ 90.45 of this Code or by Article III of the Western Interstate Corrections Compact (§ 90.52 of this Code), and he may thereafter transfer an inmate or inmates of the correctional institution for which such correctional emergency was declared to another correctional institution without any further administrative proceedings; provided, however, that any

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transfer of an inmate or inmates under conditions of correctional emergency shall be to a correctional institution within Guam, if such then exists and then has the capability of providing secure custody and proper care to such inmate or inmates, and that no inmate shall be transferred to a correctional institution outside of Guam under conditions of correctional emergency unless no correctional institution then existing within Guam then has the capability of providing secure custody and proper care to such inmate.

(d) Termination of Correctional Emergency. Whenever the Director determines that the conditions which necessitated the declaration of a correctional emergency no longer have the effect of rendering the correctional institution unable to provide secure custody and proper care for the inmates thereof, the Director shall declare the termination of such correctional emergency. Such declaration shall be in writing and executed by the Director and shall be filed and delivered as set forth in Subsection (b) of this Section. Such termination shall be effective immediately upon its execution.

(e) Return of Inmates. Upon the termination of a correctional emergency, all inmates who were transferred under the provisions of Subsection (c) of this Section shall immediately be returned to the correctional institution from which they were transferred, at the Department's expense.

SOURCE: Added by P.L. 15-59:2, eff. 08/31/79.

2017 NOTE: References to "territory" and "territorial" removed and/or altered to "Guam" pursuant to 1 GCA § 420.

§ 90.47. Inmate Transfer: Non-Emergency.

The Director of Corrections is authorized to transfer an inmate to a correctional institution outside of Guam in non-emergency circumstances.

SOURCE: Repealed and reenacted by P.L. 24-86:1.

2017 NOTE: References to "territory" and "territorial" removed and/or altered to "Guam" pursuant to 1 GCA § 420.

§ 90.47.01. Same: Disciplinary Transfer.

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The Director may recommend the transfer of an inmate to an institution outside of Guam for disciplinary reasons in the following circumstances:

(a) when an inmate is alleged by an officer, employee or other inmate to have committed a violation of such institution's rules or regulations, which violation might constitute a threat to the order or discipline of the institution or to the physical safety of an officer, employee or any inmate; or

(b) when an inmate is subsequently convicted of a violation of § 58.20 or § 58.30 of this Code, or of any violent crime.

SOURCE: Repealed and reenacted by P.L. 24-86:1.

2017 NOTE: References to "territory" and "territorial" removed and/or altered to "Guam" pursuant to 1 GCA § 420.

§ 90.47.02. Same: Non-disciplinary Transfer.

The Director may recommend the transfer of an inmate to an institution outside of Guam for non-disciplinary circumstances under either of the following circumstances:

(a) whenever the Director determines that, due to the physical or mental condition of an inmate, the present incarceration lacks adequate facilities for custody, care, subsistence, education, treatment or training of the inmate, and that of the inmate would be better served by transfer to an institution outside of Guam; or

(b) whenever the Director determines that due to overcrowding which impacts on the adequacy of the facility to provide for the safe custody, care, subsistence, education, treatment and training of an inmate the interest of the inmate is better served by such transfer to an institution outside Guam.

SOURCE: Repealed and reenacted by P.L. 24-86:1.

2017 NOTE: References to "territory" and "territorial" removed and/or altered to "Guam" pursuant to 1 GCA § 420.

§ 90.47.03. Same: Procedures for Transfers.

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Whenever the Director of the Department of Corrections determines that an inmate be recommended for transfer to a correctional institute outside of Guam, the Director shall convene a Transfer Review Committee to review the basis for such recommended transfer. The Director shall promulgate through Executive Order rules and regulations for the establishment of a Transfer Review Committee to include:

(a) a minimum of five (5) members to include a DOC case worker, the Attorney General or representative, a correctional officer, an inmate, a member of the clergy;

(b) provisions for due notice on a recommended transfer, which shall include timely notice to the inmate and the Attorney General;

(c) provisions for hearing, final decision and appeal from a final decision of transfer;

(d) provisions for maintaining a record of each hearing.

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

SOURCE: Repealed and reenacted by P.L. 24-86:1.

§ 90.47.04. Same: Basis of Determination.

(a) The Transfer Review Committee shall base its determination for transfer upon substantial evidence as presented on the record at hearing, and shall be final. No inmate shall be recommended for transfer while any conviction for which he was incarcerated is on appeal. Any statement made by an inmate during the course of a transfer hearing shall not be admitted in evidence against the inmate in any subsequent criminal action, except for the purpose of impeachment or in a trial for perjury, false swearing or contempt.

(b) The Administrative Adjudication Law and the Open Government Law shall not apply to any proceeding or action taken under this Section, nor shall any inmate be represented by counsel in any proceeding held pursuant to this Section.

SOURCE: Repealed and reenacted by P.L. 24-86:1.

§ 90.47.05. Same: Appeal from Determination.

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Any inmate whom the Transfer Review Committee has determined is to be transferred under these provisions may appeal such determination to the Superior Court of Guam. The review of the Superior Court shall not be de novo, and shall be limited to a review of the record to determine whether the Transfer Review Committee made its determination based upon a fair and full hearing. A determination may be reversed only upon a showing that the Committee abused its discretion in applying the rules and regulations to the facts which provided the basis for the recommended transfer, and that to allow the decision to stand would result in a miscarriage of justice. Notice of filing an appeal in accordance with this Subsection does not automatically stay an inmates transfer pending appeal.

SOURCE: Added by P.L. 15-59, eff. 08/31/79. Repealed and reenacted by P.L. 24-86:1.

§ 90.48. Nursing Mothers-Accommodations.

(a) The Director of the Department of Corrections must make reasonable efforts to provide a breast pump and a sanitary room, other than a toilet stall, or a private area where a nursing mother confined at the Department of Corrections facilities can express her milk.

(b) A nursing mother confined at the Department of Corrections facilities may be allowed to breastfeed her child in a sanitary room, other than a toilet stall, or a private area as long as safeguards are in place, as determined by the Director, to prevent her escape and as long as it is *not* a threat to the infant's and the public's safety and welfare.

SOURCE: P.L. 32-098:3 (Nov. 27, 2013) added 9 GCA § 80.49.1, codified by Compiler as 9 GCA § 90.48.

2014 NOTE: This section was originally entitled "Inmate Transfers for Non-Emergency and Non-Disciplinary Reasons." Added by P.L. 15-059:4 (Aug. 31, 1979). Repealed by P.L. 24-086:2 (Oct. 6, 1997). In light of the repeal occurring more than five years ago, the Compiler used the code section for a newly added statute pursuant to the authority granted by 1 GCA § 1606.

§ 90.49. Corrections Revolving Fund.

There is hereby created, within the Department of Corrections, a revolving fund called the 'Corrections Revolving

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Fund', which shall be established by the Department of Administration in accordance with the following provisions:

(a) All funds collected from the U.S. Marshal Service, the U.S. Immigration Service and the U.S. Bureau of Prisons for housing U.S. prisoners and detainees, confinement of military personnel as agreed to in a Memorandum of Agreement between the United States Air Force and the Department of Corrections dated March 5, 2003, employees of the Department of Corrections for meals they purchase at the Department's dining facility, and the sale of hot garbage (pig slop) to private persons, shall be deposited into said Fund.

(1) Funds in the Corrections Revolving Fund may be used to purchase clothing for prisoners and detainees, foodstuffs for the dining facility, galley catering services and, equipment, medical/dental supplies, prescription and over-the-counter medicines, sanitary/hygiene supplies, and other pharmaceutical supplies for prisoners and detainees, including payment for prisoner-detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs and for DepCor Department of Correction Reservists.

(2) Expenditures from the Fund shall be approved by the Director of Corrections and posted on the Department's website.

(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund shall be maintained by the Director of Administration.

(4) Such accounting shall include and clearly identify the sources and amounts of all funds paid into or withdrawn from said Fund.

(b) The Corrections Revolving Fund shall be maintained separate and apart from all other funds of the government of Guam.

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(c) *No* expenditures and encumbrances from the Corrections Revolving Fund shall be made without legislative approval through appropriation.

SOURCE: Added by P.L. 27-106:VI:17 (Sept. 30, 2004). Amended by P.L. 28-068:IV:108 (Sept. 30, 2005).

ARTICLE 2
WESTERN INTERSTATE CORRECTIONS COMPACT

- § 90.50. Purpose of Article.
- § 90.51. Compliance to §§ 90.46-90.48.
- § 90.52. Compact Stated.
- § 90.54. Director, Department of Corrections May Commit Prisoner Outside of Guam Pursuant to Terms of Compact.
- § 90.56. All Agencies of Government of Guam Shall Enforce Compact.
- § 90.58. Director, Department of Corrections May Hold Hearings as Required by Compact.
- § 90.60. Governor May Contract to Implement Compact.
- § 90.62. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.
- § 90.64. Severability.
- § 90.66. Effective Date.

2014 NOTE: The following Compiler's Comment was published as an original annotation in the Criminal and Correctional Code (1977), enacted by P.L. 13-185 (Sept. 2, 1976). It was included when the Criminal and Correctional Code (1977) was "recodified" as Title 9 of the Guam Code Annotated pursuant to P.L. 15-104:8 (Mar. 5, 1980), and was retained in past print publications of the GCA. The Comment is included herein for historical purposes:

COMMENT: Article 2 restates verbatim §§ 8820 through 8828 of the Government Code, which is the "Western Interstate Corrections Compact." These sections in the Government Code have been repealed by P.L. 13-187 (Sept. 2, 1976).

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§ 90.50. Purpose of Article.

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.

2021 NOTE: P.L. 36-037:2 (July 20, 2021) added a new § 90.50 entitled “Inmate Phone Access Act of 2021”; however, to avoid confusion with this existing provision, the new law was renumbered to § 90.44 by the Compiler pursuant to 1 GCA § 1606.

P.L. 36-054:XII:42 (Sept. 11, 2021) added a new § 90.50 entitled “Advance Payment for Medicines Allowed”; however, to avoid confusion with this existing provision, the new law was renumbered to § 5007.1 by the Compiler pursuant to 1 GCA § 1606.

§ 90.51. Compliance to §§ 90.46-90.48.

No person shall be transferred to a correctional institution outside of Guam unless the applicable provisions of §§ 90.46, 90.47 or 90.48 of this Code have first been complied with or unless such person has been legally sentenced to a term of imprisonment in such a correctional institution.

SOURCE: Added by P.L. 15-059:5 (Aug. 32, 1979).

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

2014 NOTE: The following comment is found in prior print publications of the GCA:

COMMENT: Congress appears to have given its consent to Guam's entry into the Compact, by enacting P.L. 87-406 in 1962. The effect of this law was to amend 4 U.S.C. § 112, adding Guam to the list of States and territories to which Congress gave its consent for entry into “..agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies...” (emphasis added). It would appear that the Western Interstate Corrections Compact is the type of compact to which Congress was referring in P.L. 87-406, and that the necessary Congressional approval has therefore been granted.

COURT DECISIONS: D.C. GUAM, 1978. Compact does not include federal correctional institutions. *Santos v. Sablan*, Dist. Ct. of Guam Civ. #78-00361 (Memorandum Order, 10/27/78; Duenas, J.) D.C. GUAM, 1978. Article VII of Compact requires consent of Congress before Guam can become member of Compact and legally enter into inmate transfer contracts with other members. *Santos v.*

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Sablan, Dist. Ct. of Guam Civ. #78-00361 (Memorandum Order,
10/27/78; Duenas, J.)

[Later research has determined that Congress has generally
consented to Guam's entry into this comment.]

§ 90.52. Compact Stated.

The Compact as contained herein is hereby enacted into law and entered into on behalf 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.

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(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.

(4) Delivery and retaking of inmates.

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract herewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific 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,

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and reservation of capacity. Such payment may be in a lump sum or 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 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 the 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

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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 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 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 no 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.

(g) An inmate confined pursuant to this Compact shall be released within the Territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its Territory.

(h) Any inmate confined pursuant to the terms of this Compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such

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obligations modified 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 of 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 escape.

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

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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 of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become 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,

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such inmates as it may have confined pursuant to the provisions of this Compact.

Article IX
Other Arrangements Unaffected

Nothing contained 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 of 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 preceding 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. Director, Department of Corrections May Commit Prisoner Outside of Guam Pursuant to Terms of Compact.

The Director of Corrections may commit or transfer any inmate of a penal institution under his responsibility to any institution without Guam if Guam has entered into a contract or contracts for the confinement of inmates in such institution pursuant to Article III of the Compact.

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

§ 90.56. All Agencies of Government of Guam Shall Enforce Compact.

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The courts, departments, agencies and officers of Guam 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.

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

§ 90.58. Director, Department of Corrections May Hold Hearings as Required by Compact.

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. Governor May Contract to Implement Compact.

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. Guam to Provide Transportation to Guam Resident Ending Sentence Out-of-Guam.

Where the inmate of an institution within Guam is committed or transferred to any institution outside Guam pursuant to § 90.54, and if such inmate is discharged in the receiving state by agreement pursuant to Article IV(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 Guam.

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

§ 90.64. Severability.

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 circumstances 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.

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§ 90.66. Effective Date.

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. Purpose of Article: Title.
- § 90.82. Governor to Execute Compact: Compact Stated.
- § 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.

COMMENT: Article 3 restates verbatim §§ 8840 through 8842 of the Government Code, the Interstate Compact on Juveniles, coupled with its various amendments. The respective Sections of the Government Code have been repealed by Public Law 13-187 (Sept. 2, 1976).

§ 90.80. Purpose of Article: Title.

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. Governor to Execute Compact: Compact Stated.

The Governor of Guam is hereby authorized to execute and enter into a Compact on behalf of t 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

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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, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally 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;

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(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 a 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 guardian ship, 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,

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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 of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue and order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who shall appoint counsel or guardian and litem for him. If the judge of such court shall find that the requisition is in order he shall deliver such juvenile over the 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

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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 suspended 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 cost 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 Escapes 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

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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 the affidavit, shall be executed in duplicate, and shall be accompanied by two (2) certified copies of 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 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. The 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 and 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.

Upon reasonable information that a person is a 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, such person may be taken into custody in any other state party to his Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall

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determine, after a hearing whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, at will enable his detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained 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 identity of 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 cost 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

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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 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

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not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or 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 not reviewable within the receiving state, but, 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

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(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 lock-up 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. Such care, treatment and rehabilitation may be provided in an institution located within any state entering 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

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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 state receiving such a 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 this 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 state.

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.

Article XII

Compact Administrators

That the Chief Judge of the Superior Court of Guam shall be the Compact Administrator and who, acting jointly with like officers of other states, shall promulgate rules and regulations to carry out more effectively the terms 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.

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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 by 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

(a) 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 the form substantially as follows:

(1) 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

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receiving state, such receiving state to act in that regard solely as agent for the sending state.

(2) 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.

(3) 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.

(4) 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.

(5) 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 contractual arrangement to the contrary. All states party to this Article shall have access to Compact Institutions at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

(6) Persons confined in "Compact Institutions" pursuant to the terms of this Compact shall at all times be subject to

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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.

(7) 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.

(8) 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.

(A) 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.

(B) In addition to any institution in which the authorities of this Territory may otherwise confine or order the confinement of a delinquent juvenile, such

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authorities may, pursuant to this Article, confine or order the confinement of a delinquent juvenile in a Compact Institution within another party state.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with “Numbers” to “Lowercase Letters,” subsections beginning with “Lowercase Letters” to “Numbers,” and subsections beginning with “Numbers” to “Uppercase Letters” in this article.

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

§ 90.84. Chief Judge of Superior Court to be Compact Administrator: Duties.

Pursuant to the Compact the Presiding Judge of the 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 Guam in facilitating the proper administration of the Compact or of any agreements entered into by Guam thereunder.

2017 NOTE: References to “territory” and “territorial” removed and/or altered to “Guam” pursuant to 1 GCA § 420.

ARTICLE 4
PRISON INDUSTRIES

§ 90.90. Prison Industries, Established.

§ 90.91. Prison Industries Revolving Fund.

§ 90.90. Prison Industries.

(a) Prison Industries, Established. The Department of Corrections is hereby authorized to establish such prison industries as may be feasible to provide a means for inmates and detainees to receive job training and skills development; to provide opportunities for the earning of wages to be used to pay

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restitution to victims of crime, and payment of fines and court costs; and to provide additional means for funding certain recurring expenses of the Department. The Department *shall* separate and designate each prison industry to be established as occurring “within the secured perimeter” or occurring “outside the secured perimeter.” This Act is *not* meant to replace the activities authorized by Chapter 84 of Article 1, Title 9, Guam Code Annotated, but *shall* be viewed as authorizing additional activities. This Chapter *shall not* supersede, *nor* affect any programs undertaken pursuant to Chapter 81 of this Title.

(b) Role of Corrections Advisory Council. The Corrections Advisory Council *shall* advise the Department on the suitability of any industry to be established, and may assist the Department in other matters relative to the establishment, operation, and maintenance of a chosen industry.

(c) Earnings Formula, established. Inmates shall be paid at no less than local prevailing wage rates as determined by the Director of Labor. Each inmate participating in a prison industry shall have all wages earned subject to this Earnings Formula:

(1) Twenty-five percent (25%) to the Criminal Injuries Compensation Fund.

(2) Twenty-five percent (25%) to payment of court-ordered fines, fees, and restitution. When such court-ordered fines, fees, and restitution have been satisfied, this percentage shall be applied to the Inmate’s Account.

(3) Twenty-five percent (25%) to the Prison Industries Revolving Fund.

(4) Twenty-five percent (25%) to the Inmate’s Account. Each participating inmate may elect to provide up to one hundred percent (100%) of the twenty-five percent (25%) for child and spousal support.

(5) In the event that the participating inmate does not owe any sum listed above, one hundred percent (100%) of earned wages shall be placed in the Inmate’s Account.

(d) Eligibility to Participate. The Department *shall* establish criteria for determining an inmate’s eligibility for

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participation in an established prison industry. All inmates shall be eligible for participation in an established prison industry consistent with eligibility requirements for other in-house prison rehabilitation programs unless otherwise ordered by a Court.

(e) In-kind Contributions and/or Credit for Services Allowed. The Department is authorized to enter into agreements with other government of Guam entities to receive in-kind contributions and/or a credit for services rendered in lieu of cash payments.

(f) Authority to Bid Granted. Notwithstanding the provisions of § 84.10(c) of Chapter 84, Article 1 of Title 9, Guam Code Annotated, the Department may submit its bid for the provision of services to a non-government entity, provided, that it includes as a component of its bid the costs for housing, utilities, food, supplies and any other item that would normally be considered as part of the overhead costs.

SOURCE: Added by P.L. 29-094:2-3 (July 22, 2008). Subsection (a) amended P.L. 33-042:1 (June 10, 2015). Subsection (c) amended by P.L. 33-225:1 (Jan. 9, 2017).

§ 90.91. Prison Industries Revolving Fund.

(a) There is hereby created, within the Department of Corrections, a revolving fund called the “Prison Industries Revolving Fund” (Fund), which *shall* be established by the Department of Administration in accordance with the following provisions:

(b) All funds collected from § 90.90(c) *shall* be deposited into said Fund.

(1) Funds in the Prison Industries Revolving Fund may be used to purchase clothing for prisoners and detainees, foodstuffs for the dining facility, galley catering services and equipment, medical/dental supplies, prescription and over-the-counter medicines, sanitary/hygiene supplies and other pharmaceutical supplies for prisoners and detainees, including, payment for prisoner-detainee maintenance costs in any off-island prison or medical institutions, payment for overtime and related personnel costs for personnel specifically assigned to tasks involving Prison Industries, and

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for training of Department of Corrections personnel.

(2) Expenditures from the Fund *shall* be approved by the Director of Corrections and posted on the Department's website.

(3) A complete and accurate accounting of all money deposited into and withdrawn from such Fund *shall* be maintained by the Director of Administration.

(4) Such accounting *shall* include and clearly identify the sources and amounts of all funds paid into *or* withdrawn from said Fund.

(c) The Prison Industries Revolving Fund *shall* be maintained separate and apart from all other funds of the government of Guam.

(d) The Fund *shall* be subject to an annual audit, and its findings *shall* be posted on the department's website.

SOURCE: Added by P.L. 29-094:2-3 (July 22, 2008). Subsection (b)(1) amended P.L. 33-042:1 (June 10, 2015).

2017 NOTE: P.L. 33-225:2 (Jan. 9, 2017) authorized the Director of Corrections to form a non profit organization to administer the prison industry program. The board of directors of this non profit organization shall have the fiduciary responsibility to maintain the goals and objectives of the program.

ARTICLE 5
TRANSFER PURSUANT TO TREATY

§ 90.100. [Untitled Section].

§ 90.100. [Untitled Section].

When a treaty is in effect between the United States and a foreign country that provides for the transfer of convicted offenders who are citizens or nationals of the foreign country, upon the recommendation of the Attorney General of Guam, *I Maga'lahaen Guåhan* (the Governor of Guam) or the Director of the Department of Corrections, if designated by *I Maga'lahi* (the

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Governor), on behalf of the island and subject to the terms of the treaty; may consent to the transfer of the convicted offenders who are under the jurisdiction of the Department of Corrections to the place or jurisdiction specified in the treaty. *I Maga 'lahen Guâhan* (the Governor) may take any other action necessary to initiate the participation of this territory in the treaty.

SOURCE: Added by P.L. 31-233:XII:32 (Sept. 7, 2012) as § 95.10. Renumbered by Compiler to harmoniously fit in this chapter.

Effective Date of Title 9

2014 NOTE: Public Law 13-185, which enacted Title 9, GCA, include sections 2 and 3 which are reproduced in their entirety below:

Section 2. This Code shall become operative on January 1, 1978. 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 Bills Nos. 662 and 663 are Chaptered and become operative January 1, 1978, and, in such case shall become operative at the same time as Bill Nos. 662 and 663.

Past print publications of the GCA included the following annotations from the Compiler of Laws:

COMMENT: The effective date of this Code, the Criminal Procedure Code and P.L. 13-187 was postponed until January 1, 1978 by P.L. 14-052 (July 14, 1977).

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COURT DECISIONS: D.C.GUAM:APP.DIV. 1983 Dismissal of an indictment for conspiracy, wherein the acts alleged covered the periods in which the old Penal Code was in effect and the present Criminal and Correctional Code (9 GCA) was in effect should not be dismissed, but it should be left up to proof at trial to determine if, in fact, a crime was committed during the operative period of 9 GCA. If the fact show that no act was committed during the period of 9 GCA (following January 1978), then acquittal will be in order. However, the indictment charges such facts and, therefore, the indictment should stand. *People v. Manibusan*, D.C. Case #81-053A.

ARTICLE 6

CIVILLIAN CORRECTIONS RESERVE PROGRAM

SOURCE: Added by P.L. 35-064:1 (Feb. 11, 2020) as §§ 90.200 to 90.206, renumbered by the Compiler pursuant to 1 GCA § 1606.

- § 90.201. Creation.
- § 90.202. Functions and Duties.
- § 90.203. Recruitment.
- § 90.204. Training, Equipping, and Maintenance of Records.
- § 90.205. Reservist: Authority.
- § 90.206. Same: Allowance.
- § 90.207. Authorization for Full-Time CCRP Officers.
- § 90.208. Same: Eligibility and Oath.
- § 90.209. Rules and Regulations: Recommendations.

§ 90.201. Creation.

(a) There is hereby created within the Department of Corrections (DOC) the Civilian Corrections Reserve Program (CCRP), which *shall* be headed by the Director of DOC (Director).

(b) The Director, subject to the advice and control of the Governor, *shall* be responsible for carrying out the purposes of this Article, and shall have such additional duties and responsibilities as are authorized herein, or as may be prescribed by the Governor.

SOURCE: Added by P.L. 35-064:1 as § 90.200 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

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§ 90.202. Functions and Duties.

(a) The general functions and duties of the CCRP *shall* be to provide backup manpower to protect the public from the destructive actions of law offenders through control and rehabilitation. It *may* provide staff services to the Judiciary, the Parole Board, probation officers, and interested agencies of the Executive Branch.

(b) The Director *shall* formulate a program whereby the CCRP *shall* adhere to the functions and duties herein prescribed. From time to time, the Director shall review and revise the functions and duties of the CCRP to ensure an amicable discharge of responsibilities and duties acknowledging the fact that their roles are an extension of the duties of the regular personnel.

SOURCE: Added by P.L. 35-064:1 as § 90.201 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

§ 90.203. Recruitment.

(a) The Director *shall* recruit, on an entirely volunteer basis, local residents who desire to make available their services to assist the Department of Corrections in carrying out the function of protecting the public from the destructive actions of law offenders through control and rehabilitation.

(b) The Director *shall* further promulgate rules and regulations for recruitment regarding the age, health, and other requirements.

(c) Nothing in this Section shall prohibit the Director from recruiting a resident who is a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

SOURCE: Added by P.L. 35-064:1 as § 90.202 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

§ 90.204. Training, Equipping, and Maintenance of Records.

(a) Training for the CCRP members *shall* be conducted pursuant to the provisions of the Peace Officer Standards and Training (POST) Commission in 17 GCA Chapter 51. Initial

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training requirements *shall* be identical to those required of DOC cadets.

(b) The Director *shall* maintain a roster of reservists who have received the training prescribed by 17 GCA Chapter 51. In order to maintain membership in the CCRP, each member must keep up with his scheduled training, and no reservist may remain in the CCRP if he or she is unable to keep up with or otherwise absorb the training. Additionally, basic supplies and equipment *shall* be provided to ensure a constant operability of the CCRP, including a continuing program for replacement.

(c) Any member of the CCRP who has *not* met the minimum qualifications/certifications for firearms safety and proficiency, physical fitness, recruitment clearances, and background checks *shall not* be allowed to serve in the CCRP.

SOURCE: Added by P.L. 35-064:1 as § 90.203 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

§ 90.205. Reservist: Authority.

Whenever members of the CCRP are rendering assistance to DOC, such volunteers *shall* have the same powers, duties, rights (including coverage under the Worker's Compensation Act), privileges and immunities, as if they were paid, full-time members of the Department of Corrections, except that they *shall* earn recruitment credit for services performed as volunteers.

SOURCE: Added by P.L. 35-064:1 as § 90.204 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

§ 90.206. Same: Allowance.

Each member of the CCRP who successfully completes probationary requirements as established by the Director, and who serves a minimum of twenty (20) hours to maintain good standing as a CCRP officer, and forty-two (42) hours per month, *shall* receive an allowance of Five Hundred Dollars (\$500) per month to defray the cost of maintenance of their equipment and uniforms. The Department of Corrections *shall* identify funds within their department appropriations to satisfy the intent of this Section.

SOURCE: Added by P.L. 35-064:1 as § 90.204.1 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

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§ 90.207. Authorization for Full-Time CCRP Officers.

(a) The Department of Corrections (DOC) may employ a CCRP officer on a temporary, full-time basis, if such officer is an active member and has attained at least two thousand eighty (2,080) cumulative service hours when a critical need arises due to military activation of DOC officers or absence due to long-term disability status that has been certified by a medical doctor. DOC may exercise this authority provided its authorized budget for personnel is *not* exceeded. The CCRP officer *shall* return to reservist status pursuant to this Article when the incumbent returns from military service or long-term disability or at the discretion of the Director.

(b) When employed by DOC, a CCRP officer may only serve as an equivalent of Corrections Officer I and be compensated as a Corrections Officer I, Step I. Said CCRP officer *shall* be eligible to receive sick leave, be eligible for the Government of Guam Health Insurance Program, and *shall not* be eligible for a stipend as a Reserve officer for the duration of their temporary employment with DOC.

(c) A CCRP reservist *shall* be offered permanent employment in the event a permanent position becomes available at DOC; provided, that the reservist meets all of the qualifications as prescribed in this Article. The Director *shall* promulgate rules and regulations that determine the order in which reservists are selected for permanent service.

(d) Notwithstanding 10 GCA § 77114(a)(1), a CCRP officer who serves as a Corrections Officer I, Step I under this Section may be a non-immigrant alien admitted into Guam under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

SOURCE: Added by P.L. 35-064:1 as § 90.204.2 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

§ 90.208. Same: Eligibility and Oath.

(a) No person shall be a volunteer member of the CCRP established under this Article who advocates a change by force or violence in the constitutional form of the Government of the

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United States or of Guam, or the overthrow of any government in the United States by force, or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(b) Every volunteer *shall*, entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in Guam, which oath *shall* be substantially as follows:

“I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the laws of Guam, against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter and I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the Government of the United States or of Guam by force or violence; and that during such time as I am a member of the Civilian Corrections Reserve Program I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or Guam by force or violence.”

SOURCE: Added by P.L. 35-064:1 as § 90.205 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

§ 90.209. Rules and Regulations: Recommendations.

The Director is authorized and empowered to recommend to the Governor for issuance as executive orders the making, amendment, and rescission of such orders, rules and regulations as may be necessary to carry out the provisions of this Article.

SOURCE: Added by P.L. 35-064:1 as § 90.206 (Feb. 11, 2020), renumbered by the Compiler pursuant to 1 GCA § 1606.

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ARTICLE 7

**THE DEPARTMENT OF CORRECTIONS MODERNIZATION ACT
OF 2021**

SOURCE: Added by P.L. 36-057:1 (Oct. 13, 2021).

- § 90.301. Legislative Findings and Policy.
- § 90.302. Definitions.
- § 90.303. Authorization to Enter into Long-Term Leases.
- § 90.304. Identification of Projects and Procurement.
- § 90.305. Responsibility of Contractor/Developer.
- § 90.306. Contractual Safeguards.
- § 90.307. Assignments.
- § 90.308. Pledge or Reservation of Revenues.
- § 90.309. Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.
- § 90.310. Prison IT, Building, and Security Management System.
- § 90.311. Utilities and Routine Maintenance and Repair.
- § 90.312. Maintenance Fund.
- § 90.313. Rules and Regulations.
- § 90314. Financial Plan Required.

§ 90.301. Legislative Findings and Policy.

(a) *I Liheslaturan Guåhan* finds that the Department of Corrections (DOC) was established by Public Law 9-208 on July 18, 1968 within the executive branch of the Government of Guam. Before the enactment of Public Law 9-208, the Department of Corrections was first known as the Guam Penitentiary and through Executive Order 68-23, issued by Governor Manuel F.L Guerrero, the Penitentiary was transferred to the Department of Corrections, which was effective on November 1, 1968.

(b) The Department of Corrections is the only prison on Guam and provides services to local and federal agencies. DOC provides custodial care to individuals who are convicted of crimes and for those who are waiting judicial disposition. The environment of the prison must meet federal standards such as the National Prison Standards, Prison Rape Elimination Act (PREA), and the National Commission on Correctional Healthcare

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Standards (NCCHC), which ensures that the living conditions are decent and humane; but, with the issue of overcrowding and structural failures, DOC has been struggling to properly execute their mandates and comply with national standards. DOC is ensuring that it prevents any violations of the Federal Consent Decree, which requires the Government of Guam to improve the living conditions of the inmates following the Civil Rights of Institutionalized Persons Act.

(c) The Adult Correctional Facility (ACF) in Mangilao is in its stages of failure due to age and lack of modern technology, which is affecting the operations and personnel of the correctional agency. The ACF was built to hold a maximum of three hundred (300) inmates and detainees; and currently, the population of Guam is growing as well as its crime rates, while DOC has outgrown its ACF. Over time, other DOC buildings were added to address the overcrowding issues of the ACF, and buildings used for rehabilitation and offices were re-designed to accommodate the rising population of prisoners. The Adult Correctional Facility is made of fifteen (15) housing units, which holds not only local inmates and detainees, but also immigration and federal detainees. The lack of proper facilities prevents DOC from properly providing rehabilitation to the inmates.

(d) The poor condition of the housing units of the prison is not cost effective or adequate to handle the growing prisoner population, and DOC recognized the difficulty in meeting its mandates of providing security, health, rehabilitation and welfare to the inmates and detainees under its care without compromising the well-being of its personnel. The main goal of the Department of Corrections is to provide rehabilitation to individuals who have been convicted of crimes and ensure that they become useful members of the community and to themselves.

(e) Furthermore, *I Liheslaturan Guåhan* finds that DOC has plans to build a new Department of Corrections facility with a bed capacity for one thousand (1,000) inmates to replace its current prison if funding was available. The new prison would provide the proper space to meet its mandates and the demands of its growing prisoner population. The Department of Corrections had started to draft an eighty (80)-year master plan, which will provide a phase-

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to-phase plan to construct a new Department of Corrections facility that will meet its construction goal of a bed capacity of one thousand (1,000) inmates. The Department of Corrections' goal is to ensure that all the issues on structural, technology, and security of the inmates and personnel are covered. The master plan also ensures that DOC meets all federal standards such as the National Prison Standards and PREA standards.

(f) Therefore, it is the intent of *I Liheslaturan Guåhan* to provide the Department of Corrections with the proper confinement of offenders in a controlled environment prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, which also promotes the safety of the people of Guam. *I Liheslaturan Guåhan* has identified funding to construct a new Department of Corrections Adult Correctional Facility through the Earned Income Tax Credits to be reimbursed to Guam at an estimated Sixty Million Dollars (\$60,000,000) annually, of which an estimate of no more than Five Million Dollars (\$5,000,000) will be allocated for the payments of the lease-back agreement.

(g) In an effort to overcome financing hurdles, and to provide DOC with the proper tools to meet its mandates, *I Liheslaturan Guåhan* desires to authorize the Government of Guam to enter into contract for the financing, design, construction, and long-term capital maintenance of a new Department of Corrections facility with private sector contractors who can provide long-term financing.

(h) To facilitate the financing, design, construction, and maintenance of a new Department of Corrections facility envisioned by this Act, the Government of Guam will be authorized to execute a lease agreement of existing property under its inventory for up to thirty (30) years on which the new Department of Corrections facility will be constructed.

(i) The lease of the Government of Guam's property will be to the contractor and/or the Guam Economic Development Authority, who will design and construct the new Department of Corrections facility and provide a funding for the design and construction through appropriations received from the reimbursement of the Earned Income Tax Credit for Fiscal Year

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2022 and prospective appropriations from the General Fund, thereafter annually. Upon completion of the construction, the facilities and land will be leased back to the Government of Guam for a period not to exceed the initial ground lease to the contractor over which time the Government of Guam will amortize, as lease payments to the contractor, the cost of financing, design, construction, and related expenses of the new Department of Corrections.

(j) The contractor/developer will also be responsible for the capital maintenance and repair of the Department of Corrections constructed under this Act, which costs shall be paid by the Government of Guam as provided for under this Act. At the expiration of the lease-back period, the Government of Guam real property and the Department of Corrections constructed on the Government of Guam real property will revert to the Government of Guam with no further obligations to the contractor.

2021 NOTE: Subsection designations added pursuant to authority granted by GCA § 1606.

§ 90.302. Definitions.

For the purposes of this Article and unless otherwise specified, the following words and phrases are defined to mean:

(a) *Act* means Article 7 of Title 9, Chapter 90, Guam Code Annotated, which shall be known as “The Department of Corrections Modernization Act of 2021.”

(b) *Contract* shall mean the design, construction, and financing contract entered by and between the Government of Guam and the contractor following negotiations on the response to the Request for Proposal.

(c) *Contractor/developer* shall mean the authorized entity which shall be the signatory on the contract and shall be fully responsible for carrying out the finance, design, construction, and maintenance of the new Department of Corrections. The contractor/developer may cooperate with another entity or entities in any manner the contractor/developer deems appropriate to provide for the financing, design, and construction of the new Department of Corrections envisioned by this Chapter.

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(d) The *Department of Corrections Construction Committee* shall be chaired by the Administrator or Deputy Administrator of the Guam Economic Development Authority, and include the Director and Deputy Director of the Department of Corrections, the Director or Deputy Director of the Department of Public Works, the Director or Deputy Director of the Department of Land Management, the Director or Deputy Director of the Bureau of Statistics and Planning, the Director or Deputy Director of the Bureau of Budget and Management Research, and the Director or Deputy Director of the Department of Administration.

(e) *Correctional agency* shall mean the Department of Corrections.

(f) *Correctional facility* shall mean the Department of Corrections Adult Correctional Facility.

(g) *Lease* shall mean a lease from the Government of Guam itself or through the Department of Corrections to the contractor/developer entered at the time of the contract for the property.

(h) *Lease-back* shall mean the lease from the Guam Economic Development Authority and/or the contractor/developer to the Government of Guam itself or by and through the Department of Corrections of the newly constructed Department of Corrections.

(i) *Property* shall mean any property on which a new Department of Corrections is located.

§ 90.303. Authorization to Enter into Long-Term Leases.

(a) For the purpose of facilitating the financing, design, construction, and maintenance of the new Department of Corrections encompassed by this Act, the Government of Guam is authorized to lease property that will be used for the new Department of Corrections, as required, to the contractor/developer and/or the Guam Economic Development Authority; provided, such property is in the inventory of the Government of Guam.

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(b) The Government of Guam is also authorized to lease-back from the contractor/developer and/or the Guam Economic Development Authority the property for a period mutually agreed upon between the Government of Guam and the contractor/developer and/or the Guam Economic Development Authority as may be reasonably necessary to amortize the lease-back period of no more than thirty (30) years the cost associated with the design, construction, and maintenance of the new Department of Corrections. In no event shall the end of such lease-back period be structured as an annually renewable lease with a provision for automatic renewals to the extent that pledged revenue under § 90.308 is available. The lease-back shall not be construed as a debt under any applicable debt limitation under the Organic Act of Guam or Guam law.

2021 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 90.304. Identification Projects and Procurement.

(a) The Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall utilize the program study of the correctional agency to identify and prioritize potential projects to be completed.

(1) The list of projects identified by the Program Study of the correctional agency shall be included in one (1) Request for Proposal developed by the Guam Economic Development Authority.

(A) Upon receipt of the Program Study, the Guam Economic Development Authority, in consultation with the Director of the Department of Corrections, shall solicit Request for Proposals (RFP) for a contractor/developer, in compliance with the Guam Procurement Law, for the financing, design, and construction of the Department of Corrections, according to the needs of the correctional agency and consistent with this Article.

(B) GEDA is also hereby authorized to solicit the services for a Program Management Office, which shall include, but not be limited to, creating scopes of work,

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coordinating projects and performance targets, conducting periodic quality control reviews, assuring timely product generation and response, and managing the project to produce a quality product within the budget and schedule.

(2) The choice of the contractor/developer shall be made by the Department of Corrections Construction Committee. The committee shall assess the prior performance of the contractor/developer on similar projects, and shall be free to disqualify any contractor/developer that does not have a successful record of project completion on Guam or any similar isolated locality.

(b) The Committee shall also specifically consider the contractor/developer's ability and performance with regards to the financing, development and construction of a correctional facility on Guam or any similar isolated locality.

(c) The selection of a contractor/developer shall be based upon the proposal that delivers the lowest cost value for Guam in meeting the objectives of the correctional agency.

(d) GEDA shall issue an RFP within thirty (30) days after the conclusion of its Program Study, in consultation with the Department of Corrections for the design, construction, and maintenance of the correctional facilities.

2021 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 90.305. Responsibility of Contractor/Developer.

The contract shall require that the contractor/developer be responsible for all costs, expenses, and fees of any kind or nature, associated with the design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of the Department of Corrections to the extent provided by GEDA in consultation with the Department of Corrections in the Request for Proposal. The lease may, for the purposes herein, provide that its term shall be extended for a period not to exceed the shorter of ten (10) years beyond the original term of the lease-back, or such period of time as is

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necessary to repay in full any financing arranged pursuant to § 90.309 of this Article.

§ 90.306. Contractual Safeguards.

Prior to undertaking the work of finance, design, construction, and maintenance of the new Department of Corrections, the Guam Economic Development Authority, in consultation with the Department of Corrections and the contractor/developer, shall negotiate and enter into a binding construction contract to build the new Department of Corrections in accordance with Guam Building Code under 21 GCA Chapter 67, Guam Fire Safety Codes and any other applicable requirements. The construction contract shall contain contractual obligations typically found in Government of Guam construction contracts, including, but not limited to:

- (a) warranties;
- (b) liquidated damages;
- (c) performance and payments bonds;
- (d) indemnity;
- (e) insurance;
- (f) standard specifications;
- (g) technical specifications;
- (h) progress schedule;
- (i) maintenance;
- (j) compliance with Guam labor regulations;
- (k) compliance with Guam prevailing wage rates for employment of temporary alien workers (H2) on Guam;
- (l) compliance with Public Law 28-98: restriction against contractors employing convicted sex offenders to work at Government of Guam venues; and
- (m) the 2017 Guam Tropical Energy Code.

The contract must be approved as to form and legality by the Attorney General of Guam.

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§ 90.307. Assignments.

To facilitate the purpose of this Act and provide security for the holders of any financing instruments issued pursuant to this Act, the contractor/developer may assign, without the need of the consent of the Guam Economic Development Authority, the contract, the lease and the lease-back to any underwriter, trustee, or other party as appropriate to facilitate the contractor/developer financing.

§ 90.308. Pledge or Reservation of Revenues.

(a) Rental payments under the lease and the lease-back may be secured by a pledge or other reservation of revenues collected by the Government of Guam from the following:

(1) The sum of no more than Five Million Dollars (\$5,000,000) from the revenues received pursuant to 11 GCA Chapter 42, Earned Income Tax Credit will be available for Fiscal Year 2022 only.

(2) The sum of no more than Five Million Dollars (\$5,000,000) from the General Fund shall be appropriated annually thereafter.

(3) The Governor of Guam may use federal funds that are made available to the Government of Guam by the United States Federal Government for the financing, design, construction, and maintenance of the new Department of Corrections facility.

(4) The use of other financing options is authorized for the purpose of this Act, including, but not limited to, loans, grants, bond financing, and other alternate funding options, subject to legislative approval.

(b) Any amounts reserved or pledged as provided in this Section shall be subject to annual appropriations for the purpose of making lease-back payments. The revenues pledged or reserved and thereafter received by the Government of Guam or by any trustee, depository, or custodian shall be deposited in a separate account and shall be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further action, and such reservation or the lien of such pledge shall

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be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need be recorded.

2021 NOTE: Subsection designation added pursuant to authority granted by 1 GCA § 1606.

§ 90.309. Use of Tax-Exempt Bond, Taxable Bond, and Other Financing Instruments for Financing.

(a) To minimize the financing cost to the Government of Guam, financing utilized by the contractor/developer to fund the design, construction, and maintenance of the Department of Corrections shall be through tax-exempt obligations, taxable bond obligation, or other financial instruments; provided, such financing is available at interest rates determined by the Guam Economic Development Authority to be reasonable and competitive. The Guam Economic Development Authority shall be the issuer of any financial instruments or obligations unless the Guam Economic Development Authority waives its right to serve as the issuer of financial instruments or obligations. Alternatively, the contractor may use an alternative method of financing, including, but not limited to, a short-term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States of America if such financing will better serve the needs of the people of Guam. Such alternative financing shall be approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure that the Government of Guam pays the lowest possible interest rate so that the cost of the Government of Guam's financing of the design and construction of the Department of Corrections, amortized through the lease-back payments from the Government of Guam to GEDA and or the contractor/developer, will be lower than regular commercial rates.

(b) *I Liheslaturan Guåhan*, pursuant to § 50103(k) of Chapter 50, Title 12, Guam Code Annotated, hereby authorizes the Guam Economic Development Authority to issue one or more additional series of tax-exempt and/or taxable obligations (in any case, the "bonds") for the purpose of financing the Department of

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Corrections Adult Correctional Facility, in an aggregate principal amount not to exceed Eighty Million Dollars (\$80,000,000) for the following purposes:

(1) to finance the design, construction, and/or the maintenance of the Department of Corrections Adult Correctional Facility;

(2) to fund a deposit to a debt service reserve fund;

(3) to fund capitalized interest with respect to the bonds;
and

(4) to pay expenses relating to the authorization, sale, and issuance of the bonds, including without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks, or other financial institutions providing credit enhancement fees, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale, and delivery of the bonds, subject to the following additional conditions:

(A) The terms and conditions of the bonds shall be as determined by the Guam Economic Development Authority by the execution of a certificate, trust agreement or indenture authorizing the issuance of the bonds; provided, however, that such terms and conditions shall be consistent with this Section, that the bonds shall have a final maturity not to exceed thirty (30) years; and an interest rate not to exceed seven percent (7%).

(B) No bonds authorized by this Section shall be sold until the Board of Directors of Guam Economic Development Authority has approved the sale by resolution, as provided in Chapter 50 of Title 12, Guam Code Annotated.

(C) The issuance of bonds pursuant to this Section shall not be subject to the approval of the voters of Guam.

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§ 90.310. Prison IT, Building, and Security Management System.

(a) For the purpose of ensuring the long-serving duration of the Department of Corrections facility, GEDA may include in the specifications for the new correctional facility, the requirement for a prison information management system, a security and surveillance system, and a building management system. These systems identified must be done in consultation with the Department of Corrections and comply with the federal mandates related to prison records and to foster compliance with the Federal Standards for Prisons and Jails.

(b) GEDA, in consultation with the Department of Corrections, may determine the specifications for such systems based on comprehensive, state-of-the-art technology generally accepted within the United States Prison Industry in connection with the development for a new Department of Corrections facility. The specifications shall require that all systems are designed by the same software developer so as to ensure the delivery of the rehabilitation to the inmates.

(c) In order to ensure immediate response to system downtimes or failure, GEDA may include in the specifications the requirement that the provider of these systems have a local Guam Office and service technicians stationed on Guam.

§ 90.311. Utilities and Routine Maintenance and Repair.

The contractor/developer shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone, and cable and all maintenance and repair and exterior groundskeeping and landscaping and upkeep of the Department of Corrections.

§ 90.312. Maintenance Fund.

The contract with the contractor/developer, and the lease-back shall provide that all capital maintenance and repair of the Department of Corrections facility be performed by the contractor/developer. The contractor/developer shall provide sufficient funding for a separate maintenance fund for this purpose; sufficient funds for this purpose shall be defined as the

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cost of capital maintenance and repair for the remaining period of the lease agreement with the Government of Guam after the completion of the Department of Corrections. The maintenance fund shall be used exclusively for the purpose of capital maintenance and repair and shall be in an interest-bearing account segregated from other funds held in escrow.

§ 90.313. Rules and Regulations.

The Guam Economic Development Authority, in consultation with the Department of Corrections, may promulgate rules and regulations pursuant to the Administrative Adjudication Law as necessary to implement the provisions of this Article.

§ 90.314. Financial Plan Required.

GEDA shall prepare a financial plan in accordance with the following:

(a) At a minimum, the financial plan shall include a comprehensive report of the associated costs and sources of revenues required for the duration of the Department of Corrections Modernization Act of 2021 (Project). The financial plan should reflect the total Project cost and any phases that represent the Project development priorities. All anticipated Project revenues shall be matched and allocable to the anticipated Project costs and shall detail its impact on the overall debt ceiling.

(b) The financial plan shall be submitted to *I Maga'hågan Guåhan* and transmitted to the Speaker of *I Liheslaturan Guåhan*. No solicitation of Request For Proposal or invitation for bid authorized to effectuate the requirements of this Act may be issued until the financial plan is delivered to the Speaker of *I Liheslaturan Guåhan*.
