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**CHAPTER 5
FAMILY COURT ACT**

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NOTE: This Chapter was enacted by Public Law 17-012, and has been amended since that law. All references to the SOURCE in this Chapter will be to P.L. 17-012 unless otherwise stated; the Code of Civil Procedure sections shown are the original source of material enacted by P.L. 17-012. Originally, this Chapter was the Juvenile Court Act, found in the Code of Civil Procedure, § 250 et seq. The Chapter was reviewed by a committee consisting of the Executive Director of the Law Revision Commission (representing the Commission and the Judiciary Committee of the Legislature), representatives from the Public Defender, Superior Court, Attorney General, Department of Youth Affairs, Youth Division of the Department of Safety (now Guam Police Dept.) and the Department of Education. The efforts of that Committee were adopted, with some changes on the floor, as Public Law 17-012.

The Comments to the original bill were before the Legislature during their consideration of the measure and, therefore, can be considered Legislative History.

§ 5101. Creation of Family Court.

There is here created for Guam a division of the Superior Court which shall be called the *Family Division of the Superior Court*. This Division of the Superior Court shall be a court of record, having a seal, and the judge, clerk and referees thereof shall be personnel of the Superior Court.

SOURCE: CCP § 250 as modified and enacted by P.L. 17-012:2 as 19 GCA § 5101.

2022 NOTE: Reference to “territory” omitted pursuant to 1 GCA § 420.

COMMENT: This Section in the CC followed that of CCP § 250 except that this Section made clear that the Family (Juvenile) Court is an integral division of the Superior Court of Guam. Under prior law, there were only two statutorily created divisions of the Superior Court, the Juvenile Division and the Traffic Division, but both were part of one Court.

§ 5102. Definitions.

When used in this Chapter, unless the context otherwise required:

(a) *Court* means the Family Division of the Superior Court.

(b) *Judge* means a judge of the Superior Court sitting, either permanently or temporarily, as judge of the Family Division.

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(c) *Adult* means a person eighteen (18) years of age or older.

(d) For the purposes of § 5103(a)(4) only, a *child* or *minor* means a person less than eighteen (18) years of age on the date legal proceedings are first commenced against him. For all other purposes, a *child* or *minor* is a person who is less than eighteen (18) years of age.

SOURCE: 19 GCA § 5102, a modification of CCP § 251 enacted by P.L. 17-012:2.

COMMENT: The general scheme of the former Juvenile Court Act has been continued here, and 9 GCA § 7.10(a) is amended by the enacting statute for this Title, to continue the law that the age of a person, when differentiating between a minor and adult, is as of the date legal proceedings were commenced -- not the time the offense was committed. This change is due to the fact that Guam does not have facilities to confine persons as juveniles past the age of 18. The determination of a person's age was made in the District Court case of *People v. LeFever* (not published). The 9th Circuit Court of Appeals dismissed the appeal on other grounds (*People v. LeFever*; 454 F.2d 270). This Section follows existing law as to the time a person's age is determined.

Another advantage of this firm dividing line is that there can be little argument as to what court has jurisdiction over the person, whereas under the other definition, considerable uncertainty is raised over the issue.

§ 5103. Jurisdiction.

Except as otherwise provided herein, the court shall have exclusive jurisdiction in proceedings:

(a) Concerning any child living or found within Guam:

(1) who is neglected as to proper or necessary support or education as required by law, remedial, psychiatric, psychological or other care necessary for his well-being; or who is abandoned by his parent or other custodian;

(2) whose occupation, behavior, condition, environment, or association is such as to injure or endanger his welfare or that of others;

(3) who is beyond the control of his parent or other custodian;

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(4) who is alleged to have violated any Guam law; provided, that, the Family Division shall not have jurisdiction with respect to any child sixteen (16) years of age or older who is alleged to have committed any offense under the Vehicle Code (16 GCA) if such offense is within the jurisdiction of the Traffic Division of this Court; and

(5) who is an *habitual truant* as defined by 17 GCA § 6402.

(b) To determine the custody or guardianship of the person of any child living within Guam; for adoption of a minor; for the determination [of] parentage of any child; and to terminate parental rights in connection with adoption, custody, or guardianship proceedings.

(c) For judicial consent to the marriage of a child, when such consent is required by law.

(d) For the treatment or commitment of a mentally defective or mentally disordered or emotionally disturbed child.

The Presiding Judge of the Superior Court may assign such other matters relating to the family, including divorce and probate proceedings, to the Family Division as he deems proper.

Nothing contained in this Chapter shall deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of causes pending in such other courts. Such other courts, however, may certify said questions to the Family Division for hearing and determination or recommendation.

SOURCE: 19 GCA § 5103, a modification of CCP § 251; enacted by P.L. 17-012:2.

2022 NOTE: References to “territory” or “territorial” omitted and/or replaced with “Guam” pursuant to 1 GCA § 420.

COMMENT: This Section was changed in two ways. First, local courts were given jurisdiction of juveniles only when they violate local law, not for violation of Federal or state law. Second, the jurisdiction is modified to include the assignment of family-type matters to the court, as is already

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done, so that this Court is truly a *family court*. Such family jurisdiction is not exclusive.

References have been changed to GCA usage by the Compiler where appropriate.

CROSS-REFERENCES: See new 10 GCA Chapter 88, specifically § 88300, which gives the Family Court jurisdiction over Child Protective Act actions.

§ 5104. Transfer of Cases When Defendant a Minor.

If, during the pendency of a criminal case against any person in any other court, it shall be ascertained that such person is a minor, it shall be the duty of such court forthwith to transfer the case, together with all papers, documents and testimony connected therewith, to the Family Division of this Court. The court making such transfer shall order the minor to be taken forthwith to the place of detention designated by the Family Division or to that Court itself, or shall release such minor to the custody of some suitable person to be brought before the Family Division at a time designated. The Family Division shall then proceed as provided in this Chapter.

SOURCE: 19 GCA § 5104, a modification of CCP § 251; enacted by P.L. 17-012:2.

COMMENT: The name of the court is changed to the Family Division, as is done throughout this Chapter.

§ 5105. Continuing Jurisdiction.

(a) Where jurisdiction shall have been obtained by the Court in the case of any child, such jurisdiction shall be retained by the court for the purposes of this Chapter until such child becomes eighteen (18) years of age, unless he is discharged prior thereto by the court, or until the age of twenty-one (21) years if he has been committed to and received by any public institution or department or agency maintained by the government of Guam, or if the child is subject to an order of probation issued by the court; and the court may retain jurisdiction over a child placed by the court with such public institution or agency for temporary observation and care. Any decree or order of the court may be modified at any time, except as otherwise provided by law.

(b) Where jurisdiction shall have been obtained by the court through § 5103(a)(4) in the case of any child, such jurisdiction

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may be retained by the court until such child becomes twenty-one (21) years of age, unless he is discharged prior thereto by the court. Any decree or order of the court may be modified at any time, except as otherwise provided by law.

(c) With respect to any such child who becomes eighteen (18) years of age while under the jurisdiction of the court, and who has at such time been committed to a juvenile facility by the court, the court may, upon motion of Guam, the child, or upon its own motion, and after a hearing commit the child to the custody of the Director of Corrections for confinement in the adult facility, or in any suitable public institution, agency, or department. Any decree or order of the court may be modified at any time, except as otherwise provided by law.

SOURCE: CCP § 254, as amended by P.L. 14-110 and modified by P.L. 17-012:2 and enacted as 19 GCA § 5105.

2022 NOTE: Reference to “territory” replaced with “Guam” pursuant to 1 GCA § 420.

COMMENT: P.L. 14-110 amended by provisions of law relative to the juvenile court and the juvenile detention facilities to transfer such facilities from the court to the new Department of Youth Affairs. Therefore, this Section was amended accordingly, but with the addition that the Department is included with “such public institution or agency” relative to temporary observation and care of the minor. It is thought that such omission was unintentional, but the addition is necessary, and this section modified accordingly, because the P.L. 14-110 refers to the Department of Youth Affairs **or** a public institution or agency maintained by the government of Guam. It seems that the court should be able to retain jurisdiction over the minor if he is transferred to the Department of Youth Affairs for temporary observation and care. Under former law, such a distinction was unnecessary as the juvenile facilities were maintained by the court.

The drafters believed that, since juveniles could be committed to various juvenile facilities until the age of twenty-one, it would be necessary to have some provision allowing their transfer to the adult facility after they become actual adults if the court determines that they cannot get along in the youth facility or are causing such disruptions that the facility cannot operate in its prime function of helping juveniles. The placement in the adult, or other, facility is not intended as a criminal sentence. Thus, the Family Division retains control over such persons.

§ 5106. Certification for Criminal Proceedings.

(a) If a child is sixteen (16) years of age or older at the time he committed the offense for which he is charged, and if the

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conduct is a misdemeanor or a felony of the third degree, and if the court after full investigation deems it contrary to the best interest of such child or of the public to retain jurisdiction, the court may, in its discretion, certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult. A child who is sixteen (16) years of age or older at the time he committed the offense for which he is charged shall automatically be charged as an adult for any act which would constitute a felony of the first or second degree along with any acts which are misdemeanors or felonies of the third degree which are part of the same scheme of criminal activity as the felony. If a child is under sixteen years of age at the time he committed the offense for which he is charged, and if the conduct would constitute an offense under 9 GCA Chapter 16 (Homicides), and if the court after full investigation deems it contrary to the best interest of such child or of the public to retain jurisdiction, the court may, in its discretion, certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult. If a child is certified as an adult, the same judge shall not, in turn preside over the criminal proceedings against such child.

(b) If a person over the age of eighteen (18) years, over whom the court retains jurisdiction under this Title, is subject to a commitment or probation order of the Family Division and is charged with any offense against the laws of Guam not triable in the Traffic Division of the Court, such person shall be tried and punished as an adult. If, during the pendency of such adult proceedings, the person would be entitled to bail as an adult, the Superior Court shall, instead of releasing such person, remand him to the custody of the department, agency, or institution to which he was committed at the time of the bail proceedings. If such person was not committed under this Title, but was on probation, he may be admitted to bail and the conditions of his probation under this Title made a part of the conditions of his bail. Nothing in this Section shall prevent the Family Division, upon the appropriate proceedings, from taking action against such person based upon a violation of his conditions of probation.

(c) Should the adult proceedings against any person described in Subsection (b), above, be terminated for any reason,

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or such person released from the judgment of the adult court, including by the completion of any adult sentence, before the person has reached his twenty-first (21st) birthday, such person shall be remanded to the jurisdiction of the Family Division for the completion of his original juvenile disposition. Upon such remand, the judge of the Family Division may determine, in light of all the circumstances then existing, whether this person shall be returned to the custody of the juvenile institution to which he had been committed at the time he was sentenced as an adult or, whether, because of such conviction and other circumstances, a modification of the juvenile commitment, or discharge from the jurisdiction of the Family Division, should be made. The court may continue the juvenile confinement, or may release the person from the jurisdiction of the Family Court, or may modify the order previously issued in any manner the court deems necessary.

(d) Notwithstanding Subsection (a) of this Section, on motion of either the prosecutor or defendant, or *sua sponte* by the Court, the complaint or indictment may be transferred to the jurisdiction of the Family Court upon a finding based on clear and convincing evidence that the best interest of the minor would be amenable to the care, treatment, and training programs available through the facilities of the juvenile court based on an evaluation of the following:

- (1) the age of the minor;
- (2) the history of the minor, including:
 - (A) any previous delinquent or criminal history of the minor;
 - (B) any previous abuse or neglect history of the minor; and
 - (C) any mental health, physical or educational history of the minor, or a combination of these factors;
- (3) the circumstances of the offense, including:
 - (A) the seriousness of the offense;
 - (B) whether the minor is charged through accountability;

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(C) whether there is evidence the offense was committed in an aggressive and premeditated manner;

(D) whether there is evidence the offense caused seriously bodily harm; and

(E) whether there is evidence the minor possessed a deadly weapon;

(4) the advantages of treatment within the juvenile justice system, including, whether there are facilities or programs, or both, particularly available in the juvenile system;

(5) whether the security of the public requires sentencing under Title 9, Chapter 80 of the Guam Code Annotated;

(6) the minor's history of services, including the minor's willingness to participate meaningfully in available services;

(7) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction; and

(8) the adequacy of the punishment or services.

In considering these factors, the court *shall* give greater weight to the seriousness of the alleged offense and the minor's prior record of delinquency than to the other factors listed in this Subsection.

SOURCE: 19 GCA § 5106 enacted by P.L. 17-012:2; Subsection (a) amended by P. L. 17-027:4. Subsection (d) added by P.L. 33-033:3 (June 10, 2015).

2015 NOTE: The legislative intent for adding subsection (d) is set forth in P.L. 33-033:2, as follows:

Section 2. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that current Guam law provides that any child of the age of sixteen (16) years or older, who is charged with a second or first degree felony is automatically certified as an adult. Although many times appropriate, there are instances where the Office of the Attorney General has seen that the charged minor would greatly benefit from being charged with the respective second or first degree felony, but

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have their criminal proceedings be adjudicated in Family Court. Unfortunately, no mechanism currently exists in Guam law to provide Family Court jurisdiction for minors aged sixteen (16) or older who are charged with second or first degree felonies.

Therefore, it is the intent of *I Liheslaturan Guåhan* to ensure discretion as to Family Court jurisdiction of children aged sixteen (16) years or older who are charged with second or first degree felonies by adding a new § 5106(d) of Chapter 5, Title 19, Guam Code Annotated.

COMMENT: Contrast CCP § 254, as amended by P.L. 14-110. This Section has been changed in concept for three reasons. First, the court should be able to retain jurisdiction over a child after he is 18 for purposes of probation as well as for purposes of additional commitment. Since jurisdiction may extend past age 18, and the possibility of such person committing crimes during such juvenile jurisdiction, provisions must be made for charging and sentencing such person as an adult. It would be wrong for a relatively minor adult offense to effect the release of such person who had committed a more serious juvenile offense. Likewise, it would be wrong to permit a less serious juvenile offense to wipe out potential punishment for a more serious offense committed as an adult. Thus, the provisions for remand to the jurisdiction could still continue.

In this Section the age of determination is the age when the offense occurred. This is different from the standard in § 5102 because in this Section we are dealing specifically with a determination of a person's maturity in committing an offense and a number of persons believe that there is a clear growth in maturity of the average minor when he or she attains the age of 16.

P.L. 17-027 amended this section to require automatic adult treatment for all minors over sixteen who are charged with first or second degree felonies. All homicides to be charged as adult crimes.

§ 5107. Petition to Court to Act; Contents.

Whenever any person informs the court that a child is within the purview of this Chapter, the court shall make a preliminary inquiry to determine whether the interest of the public or of the child requires that further action be taken. Thereupon the court may make such informal adjustment as is practicable without a petition, or may authorize a petition to be filed by any person. If informal adjustments are made, they may be made only with the consent of the juvenile and any other parties who may be involved in the carrying out of such informal adjustments. The petition and all subsequent documents shall be entitled "in the interest of _____, a minor."

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The petition shall be verified and may be upon information and belief. It shall set forth plainly:

(a) the facts which bring the child within the purview of this Chapter;

(b) the name, age and residence of the child;

(c) the names and residences of the parents, if known;

(d) the name and residence of the legal guardian, if any, of the person or persons having custody or control of the child, or of the nearest known relative if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner, the petition shall so state.

SOURCE: CCP § 256 enacted as 19 GCA § 5107 by P.L. 17-012:2.

COMMENT: While this Section appears to involve one procedure, practice before the Family Division indicates that this Section should be maintained in statutory form and, in fact, has not been changed by court rule. Practice shows that there are several forms of the *petition* depending upon the action desired and the facts of the matter. Thus, a petition on account of a neglected child is different from a petition alleging commission of an offense.

The Attorney General has suggested that the *informal procedures* permitted by this Section be spelled out because of due process requirements of the U.S. Supreme Court in re *Gault and United States v. Kent*. It seems to this drafter that detailing here need not be made. This Section follows exactly the current law. This drafter believes that any such *informal procedures* would be undertaken only with the consent of the minor (and his attorney, if he chooses to have one). If the informal procedures were rejected, then a petition would have to be filed. The whole idea of informal procedures is that they be creative as to the problem at hand. Therefore, this Section was changed to require that informal procedures be undertaken only with the consent of the parties involved, not only the juvenile, but any other parties, such as parents, school, etc.

§ 5108. Summons Issued to Bring Child Into Court.

After a petition shall have been filed and after such further investigation as the court may direct, unless the parties hereinafter named shall appear voluntarily, the court shall issue a summons reciting briefly the substance of the petition and requiring the person or persons who have custody or control of the child to appear personally and bring the child before the court at a time and place stated. If the person so summoned shall be other than a parent or guardian of the child, then the parent or guardian or both

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shall also be notified of the pending case and of the time and place appointed, by personal service before the hearing, except as hereinafter provided. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of a judge, is necessary.

If it appears that the child is in such conditions or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may order by endorsement upon the summons, that the officer serving the same shall at once take the child into custody.

SOURCE: CCP § 257 enacted as 19 GCA § 5108 by P.L. 17-012:2.

§ 5109. Summons; Service.

Service of summons shall be made personally by the delivery of an attested copy thereof to the person summoned; provided, that if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for the preceding Section, he may order service by registered or certified mail addressed to the last known address, or by publication thereof, or both. It shall be sufficient to confer jurisdiction if service is effected at least forty-eight (48) hours before the time fixed in the summons for the return thereof. If the child is in custody at the times required for serving of the summons, and at the time of the hearing to which the summons refers, no such summons is required to obtain jurisdiction over the child.

Service by summons process or notice required by this Chapter may be made by any suitable person under the direction of the court and upon request of the court, shall be made by any police officer. The judge may authorize the payment of necessary traveling expenses incurred by any person summoned or otherwise required to appear at the hearing of any case coming within the purview of this Chapter, and such expenses when approved by the judge shall be a charge upon the government of Guam.

SOURCE: CCP § 258 as modified and enacted by P.L. 17-012:2 as 19 GCA § 5109.

COMMENT: One sentence is added to this Section as originally enacted, and this refers to the child who is in custody and who remains in custody up until the time of whatever hearing is scheduled. The former section

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seemed to be a mere exercise in extra paper work, since it would be the responsibility of the court, and the officials of the Department of Youth Affairs, to bring the child to the hearing, regardless of the receipt of any summons. Of course, some form of notification will be necessary to physically have the child brought from wherever he is in custody under the new Department of Youth Affairs to the court. This method of notice can be worked out by the court and the Department of Youth Affairs and does not need to be a statutory form of notice.

§ 5110. Warrant Issued If Summons Disobeyed.

If any person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of court. In case the summons cannot be served, or the party served failed to obey the same, or in case when it shall be made to appear to the judge that the service will be ineffectual or that the welfare of the child requires that he be brought forthwith into custody of the court, a warrant or copies may be issued for the parent or guardian or the child.

SOURCE: CCP § 259 enacted as 19 GCA § 5110 by P.L. 17-012:2.

§ 5111. Custody: Provisions Governing.

(a) When any child found violating any law or any rule or regulation with the force and effect of law, or whose surroundings are such as to endanger his welfare, is taken into custody, such taking into custody shall not be termed an arrest. The jurisdiction of the court shall attach from the time of such taking into custody. When a child is so taken into custody, such officer shall cause the parent, guardian or custodian of the child to be notified as soon as possible. Whenever possible, unless otherwise ordered by the court, such child shall be released to the custody of his parent or other responsible adult upon the written promise, signed by such person, to bring the child to the court at a stated time or at such time as the court may direct. Such written promise, accompanied by a written report by the officer, shall be submitted to the court as soon as possible. If such person shall fail to produce the child as agreed or upon notice from the court, a summons or warrant may be issued for the apprehension of such person or of the child.

(b) If the child is not released hereinabove provided, such child shall be taken without unnecessary delay to the court or to the place of detention designated by the court, and as soon as possible thereafter the fact of such detention shall be reported to

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the court, accompanied by a written report by the officer taking the child into custody stating:

- (1) The facts of the offense; and
- (2) The reason why the child is not released to the parent.

Pending further disposition of the case, the court may release such child to the custody of the parent or other person or may detain the child in such place as the court shall designate; subject to further order, but no child shall be held in a detention longer than two (2) days, excluding Sundays and holidays, unless an order for such detention is signed by the judge.

(c) No child shall be transported in any police vehicle which also contains adults under arrest, unless the child is alleged to have been involved with the adult also being transported in the same illegal activity or course of conduct; provided, also, that a child may be transported in the same police vehicle if, under the circumstances, other transportation is not available. No child shall at any time be detained in any police station, lockup, jail or prison; except, that by order of the judge in which reason therefor shall be specified, a child sixteen (16) years of age, but under eighteen (18) years of age whose conduct or condition is such as to endanger his safety or welfare or that of others in the detention facility for children, may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults confined thereon; provided that this section shall not prohibit the interrogation of a child with respect to any felonious activity.

(d) provisions regarding bail shall not be applicable to children detained in accordance with the provisions of this Chapter.

SOURCE: CCP § 260 less former Subsection (e), modified and enacted by P.L. 17-012:2 as 19 GCA § 5111.

COMMENT: Subsection (e) of the former § 260 CCP has been deleted and replaced with § 5128 (former § 277 CCP enacted and renumbered as 19 GCA § 5128 by P.L. 17-12:2) as it appears that former § 277 was enacted after § 260 and § 277 clearly modifies the strict requirements of § 260(e). Section 277 envisages the possibility that juveniles can be photographed and fingerprinted, but only under standards set out in court rules. This would not require that a separate order be obtained every time a particular juvenile is to be photographed or fingerprinted. Furthermore,

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former CCP § 280 enacted by the original enactment and renumbered by P.L. 9-054, repeals laws and parts of laws inconsistent with the later enactment. It would appear that former § 277 is one law that is inconsistent with and therefore repealed former § 260(e).

This Section has been modified to permit the officer who takes the child into custody to “cause” the parents to be notified, thus eliminating any inference that the particular officer must also notify the parents. This may not be practical, and it does not matter, legally, who does the notifying, so long as it is done at the direction of the officer who took the child into custody.

Again, a modification is made permitting children to be transported with adults if they are engaged in the same crime (no harm can come from this mingling since the adult and child were jointly involved in the first place. Secondly, joint transportation may be made where it is impractical, for lack of additional transportation or danger in not transporting quickly, to provide separate vehicles.

§ 5112. Hearings.

(a) All cases of children shall be dealt with by the court at separate hearings without a jury. The hearing shall be conducted in an informal manner, and may be adjourned, from time to time. Stenographic notes or other transcript of the hearing shall be required. The general public shall be excluded and only such person admitted as the judge shall find to have a direct interest in the case or in the work of the court. The presence of the child in court may be waived by the court at any stage of the proceedings. Any child may be represented by legal counsel and the Attorney General may take part in any hearing.

(b) In all hearings arising out of § 5103(a)(4), the court shall conduct the hearings pursuant to the Guam Rules of Evidence, and other safeguards required by the constitution of the United States and the Organic Act of Guam, but the court may waive provisions of the Rules of Evidence as it deems necessary considering the age and intelligence of any child who may be called as a witness in the proceedings.

SOURCE: CCP § 262 modified and enacted by P.L. 17-012:2 as 19 GCA § 5112.

COMMENT: The modification in P.L. 17-012:2 deleted the clause in the final sentence of Subsection (a) which says “and on request of the court”. The result is that the Attorney General may take part in any hearing as a matter of right. It is the belief of this drafter that the Attorney General should have the right to appear and take part in any hearing to represent

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the government of Guam. The decision should be his and those participating on behalf of the Government. Obviously, if the Attorney General has not indicated his participation, the court may order him to do so, at least in the initial stages of the proceeding. In the past, the court has ordered the Attorney General to file a petition, but the Attorney General has sometimes declined because, in his opinion, there was insufficient evidence to proceed.

Subsection (b) has been added because many persons concerned with the juvenile code felt that, where the juvenile is being accused of what is an adult crime he should be given more safeguards than in other cases. In any event, the U.S. Supreme Court is favoring the position that juveniles accused of crimes are entitled to almost the full panoply of rights granted to criminal defendants. They have not come that far yet, but the trend does exist. Nevertheless, when questioning young children, following the strict Rules of Evidence may be impossible if one is to get at the questions at hand. Therefore, the judges are allowed to vary the rules, such as the "hearsay" rule and the rule against leading questions, if they determine that the evidence is reliable and there is not other way to obtain it.

§ 5113. Referees in the Family Division.

The presiding judge of the Superior Court may appoint one (1) or more Family Division referees to serve on a full-time or part-time basis. A Family Division referee shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his order terminating the appointment of a Family Division referee, such referee shall serve as such until the appointment of his successor. The amount and rate of compensation to be paid Family Division referees, qualifications of court referees, and their duties and powers shall be fixed by the Judicial Council provided, however, that the individual appointed as a referee shall be an attorney licensed to practice law in Guam.

SOURCE: P.L. 14-148:14 renumbered 19 GCA § 5113 in P.L. 17-012:2.

CROSS-REFERENCES: See 7 GCA § 7119 and the Guam rules of Civil Procedure for general powers of referees.

COMMENT: A bill had been proposed in the 14th Legislature which sets forth more fully the powers and duties of Family Division referees, but this Section was the one eventually passed.

§ 5114. Decrees and Orders of Court.

When a child is found by the court to have committed any acts specified by § 5103(a) or is found to be in a condition specified in § 5103(a) of this Title, the court shall so decree, and in its decree shall make a finding of the facts upon which the court

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exercises its jurisdiction over said child. Upon such decree the court may, by order duly entered, proceed to as follows:

(a) Place the child on probation or under supervision in his own home or in the custody of a suitable person elsewhere, upon such conditions as the court shall determine. Probation shall mean casework services during a continuance of the case. Probation shall not be ordered or administered as a punishment, but as a measure for the protection, guidance and well-being of the child and his family.

(b) Commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children, including the Department of Youth Affairs, or to place them in family homes, or under the guardianship of a suitable person. Such commitment shall be for a definite period, which may be extended, after motion and hearing, for compelling cause shown, but in no event shall continue beyond the child's twenty-first birthday. In committing a child to a private institution or agency, the court shall select one that is approved by the Governor of Guam.

(c) The court may cause any child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist or psychologist, and for that purpose may place a child in a hospital or other suitable facility.

(d) Order such care and treatment as the court may deem best, except as herein otherwise provided. In support of any order or decree the court may require the parents or other persons having the custody of the child, or any other person who has been found by the court to be encouraging, causing or contributing to the acts or conditions which bring the child within the purview of this Chapter, to do or omit to do any acts required or forbidden by law, when the judge deems such requirements necessary for the welfare of the child. In case of failure to comply with such requirement, the court may proceed against such person for contempt.

(e) The court may dismiss the petition or otherwise terminate its jurisdiction at any time.

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No adjudication by the court of the status of any child shall be deemed a conviction, nor shall such adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction, nor shall any child be charged with crime or convicted in any court except as provided in § 5105 of this Chapter. The disposition made of a child, or any evidence given in the court, shall not operate to disqualify the child in any civil service or military application or appointment.

Whenever the court shall commit a child to any institution or agency, including the Department of Youth Affairs, it shall transmit with the order or commitment a summary of its information concerning the child and such institution or agency or the Department of Youth Affairs shall give to the court such information concerning such child as the court at any time requires.

SOURCE: CCP § 263 as amended by P.L. 14-110 (Department of Youth Affairs), and modified and enacted as 19 GCA § 5114 by P.L. 17-012:2.

COMMENT: The modifications made to Subsection (b) do not eliminate the continuing jurisdiction of the Family Division of the Superior Court over persons defined in § 5102, but rather require that commitments of juveniles be for a specific period of time rather than the present “indefinite” period until the age of 18 or 21. Thus, a juvenile commitment is more like a sentence imposed in an adult crime. This may or may not be a good idea and, as a policy matter, should be left to the Legislature to decide.

It is not intended that, in case of need, the definite period of commitment cannot be extended if a compelling, continuing need is shown.

§ 5115. Awarding Custody.

The court may, if it appears to be in the best interest of the child, place the child with the most appropriate agency, institution or person under the circumstances then prevailing.

SOURCE: CCP § 264 as modified and enacted by P.L. 17-012:2 as 19 GCA § 5114.

COMMENT: All references to religious preferences have been deleted by the Legislature. That body felt that requirements for religious preference may be unconstitutional, but this Section, as adopted, will permit the judge to take into account all circumstances, including religion, if it is a valid circumstance in the proceedings.

§ 5116. Support of Child in Custody.

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Whenever a child is committed by the court to the custody other than that of his parents, or is given medical, psychological or psychiatric treatment under order of the court, and no provisions are otherwise made by law for the support of such child or payment for such treatment, compensation for the care and treatment of such child, when approved by order of the court, shall be a charge upon the General Fund. The court may, after giving the parent a reasonable opportunity to be heard, order and decree that such parent shall pay, in such manner as the court may direct, such sum, within his ability to pay, as will cover in whole or in part the support and treatment of such child. If such parent shall willfully fail or refuse to pay such sum, the court may proceed against him as for contempt.

SOURCE: CCP § 264 as modified and enacted as 19 GCA § 5116 by P.L. 17-012:2.

NOTE: The charge is against the "General Fund," which pinpoints the liability, rather than the "government of Guam," which does not.

§ 5117. Jurisdiction Over Adults.

(a) Any person who knowingly commits any act or knowingly omits the performance of any duty, which act or omission causes or tends to cause or encourage a child to become in need of the care and protection of the Family Division of the Superior Court, is guilty of a misdemeanor.

(b) The court shall have original jurisdiction over any adult charged with violation of this Section. All proceedings under this Section shall be conducted under the law and Rules of the Superior Court governing criminal cases committed by adults.

SOURCE: 19 GCA § 5117 enacted by P.L. 17-012:2, from CCP § 266 as amended by P.L. 13-187, Section 25. Subsection (a), former § 275a of the Penal Code of Guam.

COMMENT: See *People v. Rosario* (1969) 296 F. Supp. 140. It appears that the former portion of the Penal Code was inadvertently omitted from 9 GCA at the time of its enactment in 1977. Even though the Family Court has jurisdiction, the accused will be treated as he is, an adult.

§ 5118. Procedure for Prosecution of Adults.

All provisions of this Chapter relative to procedure in cases of children, when not inconsistent with provisions of law relating to the conduct of adult cases, shall so far as practicable also apply

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to cases against adults brought under § 5116 of this Chapter. With the consent of the defendant, the court may make preliminary investigation and may make such adjustment as is practicable. On the request of the court, or on his own initiative, the Attorney General shall prepare and prosecute any case within the purview of § 5116 of this Chapter.

Upon conviction in any case the court shall have power to impose sentence as provided by law; it may suspend sentence or the execution thereof and place the defendant on probation, and may by order impose such duty upon him as shall be deemed by the court to be for the best interests of the child or other persons concerned. The court may require the defendants to give security by bond, with surety or sureties approved by the court for compliance of such order.

SOURCE: CCP § 267 as modified and enacted by P.L. 17-012:2 as 19 GCA § 5118.

COMMENT: See § 5113 of this Chapter. As has been the practice, this law was changed to specifically allow the Attorney General to bring charges for violation of § 5116 of his own initiative.

§ 5119. Permanent Custody.

(a) Whenever in the course of the proceeding instituted under § 5107 of this Chapter, it shall appear to the court that the parents or the surviving parent of a child, or the mother of the child born out of wedlock, had abandoned such child for one (1) year or more or had substantially and continuously or repeatedly or being financially able, have neglected to give such child parental care and protection; or that such parent or parents are unfit by reason of their conduct or condition which is seriously detrimental to the said child, the court shall have jurisdiction to transfer the permanent care, control and custody of such child to some other person, agency or institution, and may terminate all rights of such parent or parents with reference to such child, and also may appoint a guardian for the person of such child. Such transfer or termination shall be made only after hearing before the court, and the court shall cause notice of the time, place and purpose of such hearing to be served on such parent or parents personally at least ten (10) days prior to the date of hearing; or if the court is satisfied that personal service cannot be effected, then such notice may be

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given by publication thereof in a newspaper of general circulation in Guam once a week for three (3) weeks prior to the date of the hearing.

(b) If a child is abandoned or neglected by one (1) parent, the rights of only such parent with reference to such child may be terminated as provided in Paragraph (a) above without affecting the rights of the other parent.

(c) Upon the application of the parents or the surviving parent of a child or the mother of a child born out of wedlock, the court may order the transfer of the permanent care, control and custody of such child, and if it appears wise, the termination of all rights of a parent with reference to such child, provided that the court after a hearing finds such transfer or termination to be in the best interest of the child.

(d) Every order of the court transferring the permanent care, control and custody of a child, or terminating the rights of the parents or a parent with reference to a child, shall be in writing and shall recite the jurisdictional facts. Every such order shall be conclusive and binding on all persons and in all proceedings after date of entry thereof.

(e) If, in the case of a child born out of wedlock, the father is known, the court shall give the father the same notice as required to be given to the mother by this Section and shall afford the father the opportunity to be heard with respect to his relationship with the child. The court may award custody to the father if it appears that the father had a continuing relationship with the child sufficient to warrant granting permanent custody to him and that the father is willing and able to undertake the permanent care of the child.

SOURCE: CCP § 268 as amended and enacted by P.L. 17-012:2 as 19 GCA § 5119.

COMMENT: A new Subsection (e) has been added to this Section in view of the Supreme Court ruling in the case of *Caban v. Mohammed*, 441 U.S. _____, 60 L.Ed.2d 297, S.Ct. 1760, 47 U.S.L.W. 4462 (April 24, 1979). That case held that a father, although unmarried, had a right to object to his child's adoption by third parties. Since the custody awarded in this Section is just as permanent as an adoption, similar rights of the unwed father appear to be required here. In addition, such a policy is consistent with recent legislation in the Guam Legislature. (P.L. 15-63:3).

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§ 5120. Penalties for Violation by an Adult.

Any adult who willfully violates, neglects or refuses to obey or perform any lawful order of the court or who violates any provisions of this Chapter may be proceeded against for contempt of court, unless another penalty is provided in this Chapter. Any adult found in contempt of court may be punished by a fine not to exceed Five Hundred Dollars (\$500) or by imprisonment not to exceed to fifty (50) days, or by both such fine and imprisonment. This Section shall not limit the inherent power of the court to enforce its orders through civil contempt.

SOURCE: CCP § 269 as modified and enacted by P.L. 17-012:2 as 19 GCA § 5120.

COMMENT: The modification reflects the amendment or former § 268 (§ 5116 of this Chapter) by P.L. 13-187.

§ 5121. Fees Not to be Charged.

In proceedings under this Chapter, no court fees shall be charged against and no witness fees shall be allowed to any party to a petition. No employee of the government of Guam shall be entitled to receive any fee for the service of process or for attendance in court in any such proceedings. All other persons acting under orders of the court may be paid for service of process and attendance or service as witness, the fees provided by law for like services in cases before Superior Court, to be paid from the appropriation provided when the allowances are certified by the judge.

SOURCE: CCP § 270 reenacted by P.L. 17-012:2 as 19 GCA § 5121.

§ 5122. Records.

The court shall make and keep records of all cases brought before it, and shall devise and cause to be printed such forms for social and legal records and such other papers as may be required. The court's official records shall be opened to inspection only as provided by § 5123 or by order of the judge to persons having a legitimate interest therein. All information obtained and social records prepared in the discharge of official duty by any employee of the government of Guam at the request of the court, or by the Department of Youth Affairs, shall be privileged and shall not be disclosed directly, or indirectly to anyone other than the judge or

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others entitled under this Chapter to receive such information, except as provided § 5123 of this Chapter or unless and until otherwise ordered by the judge.

SOURCE: 19 GCA § 5122 as modified from CCP § 271, by P.L. 17-012:2.

NOTE: CCP § 271 was modified to reflect the new responsibilities of the Department of Youth Affairs.

§ 5123. Limited Disclosure of Records.

Those official records of the court, and the police reports in connection therewith, dealing with the violation by a child (except when the violation is the first offense) of any Guam law or a regulation having the force and effect of law shall be open to inspection.

SOURCE: CCP § 271.1 reenacted by P.L. 17-012:2 as 19 GCA § 5123.

2022 NOTE: Reference to “territorial” replaced with “Guam” pursuant to 1 GCA § 420.

§ 5124. Sealing and Destruction of Records.

(a) All government records concerning proceedings under § 5103(a) shall be sealed upon the juvenile's attaining 18 years of age, or upon attaining 21 years of age in the case of any person over whom jurisdiction is retained pursuant to § 5105(b). Any person whose record has been sealed pursuant to this Section may answer in the negative any question concerning such proceedings on any official form or document or upon any application for public or private employment.

(b) Sealed records may only be divulged to the juvenile, a court for the purpose of sentencing or to the court as otherwise provided by law, or to law enforcement agencies in the performance of their duties. This Subsection applies to incident reports in the custody of law enforcement agencies.

(c) Ten years after the filing of any juvenile proceedings pursuant to § 5103(a), all government records concerning such proceedings shall be destroyed. This Subsection shall not apply to incident reports in the custody of any law enforcement agency. This Subsection does not apply to statistical data which does not identify and is not likely to identify, the juvenile concerned. This Subsection shall not apply to any records kept with respect to

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proceedings granting permanent custody of a child to one not his parents, nor to proceedings terminating parental rights.

(d) It shall be unlawful for any person knowingly to require, or to inquire into, as a condition of employment, continued employment, or promotion, any information with respect to whether or not any person has been the subject of juvenile proceedings under § 5103(a). Acts done contrary to this Subsection shall be a violation.

SOURCE: 19 GCA § 5124.

§ 5125. Appeals.

(a) Any interested party aggrieved by order or decree of the Family Division may appeal said order or decree to Supreme Court of Guam.

The pendency of appeal shall not suspend the order of the Family Division regarding a child nor shall it discharge the child from custody of that court or of the person, institution, or agency, including the Department of Youth Affairs, into whose care such child shall have been committed.

If the Supreme Court does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the Family Division and remand the child to the jurisdiction of that court for supervision and care, and thereafter the child shall be and remain under the jurisdiction of the Family Division or of the institution to which he has been committed in the same manner as if no appeal had been taken.

(b) A child may appeal from a decision of the Family Division to certify him as an adult, but such appeal may be taken only if the child is convicted of the underlying offense. The Government may not appeal from a decision of the Family Division not to certify the child. If the decision to certify the child is upheld, any remand shall be deemed to be a remand to the court which had jurisdiction over such child at the time the appeal was taken.

SOURCE: CCP § 272 as heavily modified and enacted by P.L. 17-012:2 as 19 GCA § 5125.

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COMMENT: The modifying drafters believed that the route of appealing juvenile matters was too cumbersome. It was little used and it was anticipated that, in the future, appeals would not be great.

The drafters believed that Subsection (b) of CCP § 272 stated the current condition of the law. However, current law was unwritten and subject to court interpretation, which may vary from time to time. Therefore, since the question of appealing certification decisions arose frequently, Subsection (b) was thought necessary to make clear the route and availability of appeals from such decisions.

Additionally, the section was changed to make sure that, upon remand of a case wherein the certification was upheld (the juvenile will be treated as an adult, his conviction having been affirmed) then the court having jurisdiction (presumably the Superior Court, acting as an adult court) would get the case back. Confusion in prior law led to considerable legal acrobatics resulting in a valid certification being dismissed because a case involving certification was remanded to the Juvenile Court after an indictment was had in the adult court. That comedy of errors has been resolved only by re-indictment.

COMMENT: “District Court” changed to “Supreme Court of Guam” pursuant to P.L. 21-147:5 (Jan. 14, 1993).

§ 5126. Assistance to Court by Public and Private Bodies.

It is hereby made the duty of every public official or department to render all assistance and cooperation within his or its jurisdictional power which may further the objects of this Chapter. The Family Division is authorized to seek the cooperation of all societies or organizations having for their object the protection or aid of children. The Division is further authorized to request the aid of the several commissioners of Guam to assist in the supervision of minors over whom the Division is exercising its jurisdiction.

SOURCE: CCP § 273 reenacted by P.L. 17-012:2 as 19 GCA § 5126.

§ 5127. Juvenile Conference Committee.

The presiding judge shall appoint men and women from the community who shall be representative of human service entities both public and private and may include but are not limited to, commissioners, probation officers, police or educational personnel, and military personnel, to serve as members of the Juvenile Conference Committee at the pleasure of the court.

Membership on the Juvenile Conference Committee shall be for a term of one year. The Committee shall serve as a friend of

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the court in making a special study and investigation of each juvenile offender referred to it by the court, which referral may be by general classification of subject matter or specific cases. The Committee shall attempt to determine what factors brought about the antisocial behavior complained of, and shall devise ways and means of setting up an individualized service plan to aid the juvenile so that he may be trained and developed into an acceptable member of society and a good citizen so as not to become a confirmed delinquent or criminal.

All matters coming before the Committee shall be held in strict confidence and shall under no circumstances become public. Every person appointed to a Committee established pursuant to this Section shall be duly instructed by the judge as to the secrecy and confidential nature of such service, and shall take an oath to preserve such information inviolate.

SOURCE: CCP § 273.1 added by P.L. 9-007, reenacted by P. L. 17-012:2 and R/R by P.L. 17-081:2.

§ 5128. Fingerprints and Photographing.

(a) The Guam Police Department may photograph and fingerprint any child who is believed based upon probable cause to have committed a violation of Guam law and is in police custody.

(b) Within thirty (30) days of the failure of the government to prosecute the juvenile or a finding that the juvenile is not a ward of the court, then the Guam Police Department shall destroy any fingerprint or photograph taken pursuant to subsection (a).

SOURCE: CCP § 277 added by P.L. 9-054, modified. References to *Department of Public Safety* changed to current designation, *Guam Police Department*.

2022 NOTE: Reference to “territorial” replaced with “Guam” pursuant to 1 GCA § 420.

COMMENT: The Legislature, during debate, changed this section to permit photographing and fingerprinting of juveniles, for the purposes of the immediate incident. These fingerprints and photographs are not a permanent record, and must be destroyed if the juvenile is not found a ward of the court. By the reference to “police custody”, presumably the legislature means that the juvenile can be fingerprinted and photographed only when he is first apprehended by the police. Question -- What happens

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if the fingerprints are required once the juvenile is in the custody of the Department of Youth Affairs, or otherwise a ward of the court?

§ 5129. Construction of this Chapter.

This Chapter shall be liberally construed to the end that each child within the jurisdiction of the court shall receive such care, guidance and control, preferably in his home, as will enhance the child's welfare and be in the best interest of Guam, and then when such child is removed from the control of his parents the court shall secure care as nearly as possible equivalent to that which should have been given to him by them.

SOURCE: CCP § 278 unchanged in substance enacted by P.L. 17-012:2 as 19 GCA § 5129.

2022 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5130. Appropriations Authorized.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Chapter.

SOURCE: CCP § 282 reenacted by P.L. 17-012:2 as 19 GCA § 5130.

§ 5131. Repealer.

On the effective date of this title, and subject to the provisions of § 5132, §§ 250 through 282, inclusive, of the Code of Civil Procedure are hereby repealed.

SOURCE: New Section; repeals the old Juvenile Court Act. No other laws need be repealed.

§ 5132. Effective Date.

This Act shall take effect 90 days after being signed into law. Upon this act's taking effect, it shall apply to all proceedings under § 5103, regardless of when commenced, provided that this act shall only apply to proceedings under § 5103(a)(4) wherein the date of the conduct charged is on or after the effective date of this Act.

SOURCE: New section enacted by P.L. 17-012, which was effective June 23, 1983.

§ 5133. Title.

This Chapter may be cited as the *Family Court Law*.

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SOURCE: CCP § 281 modified to reflect change in Court Title, and enacted by P.L. 17-012:2 as 19 GCA § 5133.

COMMENT: Since the jurisdiction of the Family Division is statutorily increased to include all family matters, the name of this Chapter has been changed to reflect the true nature of the Family Division.

§ 5134. Balanced Approach and Restorative Justice Goals and Objectives.

(a) Goal. The goal of this Chapter is to promote a balanced juvenile justice system in Guam to protect and safeguard the rights of those injured, whether it be the community or any victim of crime, to impose offender accountability for violations of law, and to equip juvenile offenders with the rehabilitation and skills needed to live responsibly and productively.

(b) Objectives. The objectives of Balanced Approach and Restorative Justice are:

(1) to resolve conflicts and disputes by means of a non-adversarial community process;

(2) to repair damage caused by criminal acts to the community in which they occur, and to address wrongs inflicted on individual victims; and

(3) to reduce the risk of an offender committing a more serious crime in the future that would require a more intensive and more costly sanction, such as incarceration.

(c) This Section shall be interpreted and construed as to effectuate the following purposes:

(1) to respond to a juvenile offender's needs in a manner that is consistent with:

(A) prevention of repeated criminal behavior;

(B) restoration of the community and victim;

(C) protection of the public; and

(D) development of the juvenile into a productive citizen;

(2) to protect citizens from juvenile crimes;

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(3) to hold each juvenile offender directly accountable for the offender's conduct;

(4) to provide swift and consistent consequences for crimes committed by juveniles;

(5) to require parental or guardian participation in the juvenile justice process;

(6) to create an expectation that parents will be held responsible for the conduct and needs of their children;

(7) to ensure that victims, witnesses, parents, foster parents, guardians, juvenile offenders, and all other interested parties are treated with dignity, respect, courtesy, and sensitivity throughout all legal proceedings;

(8) to allow for the prosecuting authority to have the ability to divert juveniles from the formal juvenile justice process through informal early intervention, as warranted, and when consistent with the protection of the public;

(9) consistent with the protection of the public interest, to provide for juveniles who commit delinquent acts an early, individualized assessment and action plan for the juvenile offender, in order to prevent further criminal behavior through programs of supervision, care and rehabilitation which provide a balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies so that the juvenile will become more capable of becoming a more productive and responsible member of the community; and

(10) to review and evaluate regularly and independently the effectiveness of programs and services under this Section.

(d) The Law Revision Commission on Juvenile Justice, established by Executive Order No. 2008-14, shall develop and employ restorative justice approaches whenever feasible and responsive to specific criminal acts involving juveniles not involving serious crimes against persons or property, crimes involving criminal sexual conduct, or serious family violence. It is further the intent of I Liheslaturan Guåhan that the Balanced Approach and Restorative Justice Programs are not mandatory

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programs, and any program that is instituted which requires a victim's participation shall be offered only to victims of a crime who voluntarily agree to participate in the Program. The Program is designed to encourage participation from the community, including victims only when they so choose, and judicial and law enforcement officials must ensure that the juvenile justice system hold all offenders accountable for damages caused to communities and victims, and ensure that programs are designed to assist in restoring offenders to the law-abiding community.

(e) When developing the procedures relating to the Balanced Approach and Restorative Justice Program, the Law Revision Commission on Juvenile Justice shall also consider including a provision or procedure relating to "Victim and Community Involvement in Sentencing". The "Victim and Community Involvement in Sentencing" provision should include, but is not limited to, a provision that provides the following: "A Family Court Judge, when considering the disposition or sentence to be imposed against a juvenile offender whose case has been referred and court-ordered to the Balanced Approach and Restorative Justice Program, may permit the victim and the offender to submit a proposed disposition or sentence for the court's review based upon a negotiated agreement between the victim and the offender, or between the offender and the community if there is no victim. Any negotiated agreement made by the parties shall be submitted to the assigned Family Court Judge by the facilitator or mediator handling the Balanced Approach and Restorative Justice Program. The court may, with the consent of the victim and offender, impose the proposed disposition or sentence that has been determined by the negotiated agreement if the court determines and states on the record that such proposed disposition or sentence accomplishes the goals of restoring the victim and the community, and rehabilitation of the offender.

(f) All discussions that occur within a Balanced Approach and Restorative Justice process are confidential unless:

- (1) participants agree to some level of disclosure;
- (2) disclosure is required by law (e.g. present child abuse); or

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(3) such discussions reveal an actual or potential threat to a participant's safety.

SOURCE: Added by P.L. 32-152:2 (May 21, 2014).
