

**9 GCA CRIMES AND CORRECTIONS
CH. 80 DISPOSITION OF OFFENDERS**

**CHAPTER 80
DISPOSITION OF OFFENDERS**

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**ARTICLE 1
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§ 80.00. Terms of Imprisonment Are Fixed Terms.

All terms of imprisonment specified in the Guam Codes imposed upon conviction of an offense shall be fixed terms, having a determined termination date set at the time of sentencing by the court, except as provided for extension of terms of imprisonment under §§ 80.32 and 80.36 of this Code.

SOURCE: Added by P.L. 14-143, eff. 10/01/78.

COMMENT: This Section was added to make sure that the former California system of indefinite terms of imprisonment was not implemented in Guam. This Chapter as originally enacted appeared to allow such indefinite terms.

§ 80.10. Types of Sentences Allowed.

(a) Unless otherwise provided by law, the court may suspend the imposition of sentence of a person who has been convicted of a crime in accordance with § 80.60, may order him to be committed in lieu of sentence in accordance with § 80.20 or may sentence him as follows:

- (1) to imprisonment for a term required by law;

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- (2) to imprisonment and to an additional parole;
- (3) to pay a fine or make restitution as authorized by law;
- (3.5) to alternative community service or to self-improvement and rehabilitative programs;
- (4) to be placed on probation as authorized by law; or
- (5) to pay a fine, to make restitution and to be placed on probation; to make restitution and imprisonment or to pay a fine and imprisonment.

(b) Where the judgment of conviction included more than one crime, the sentences imposed may run concurrently or consecutively except that if such sentences run consecutively, the provisions of §§ 80.38, 80.40 and 80.42 shall not be applicable.

(c) The court may suspend the imposition of sentence on a person who has been convicted of a violation or may sentence him to pay a fine or make restitution as authorized by § 80.50.

(d) Nothing in this Code deprives the court of any authority otherwise conferred by law to decree [a] forfeiture of property, suspend or cancel the license, remove a person from office or impose any other civil penalty, such a judgment or order may be included in the sentence.

SOURCE: Enacted 1977; repealed and reenacted by P.L. 14-143, eff. 10/01/78; Subsection (a)(3.5) added by P.L. 15-116, eff. 03/28/80 and amended by P.L. 16-51. Subsection (b) amended by P.L. 19-04:1.

§ 80.12. Presentence Report: Psychiatric Exam: Temporary Imprisonment for Classification.

(a) The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence unless the court otherwise directs for reasons stated on the record.

(b) The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(c) The report of such investigation shall be in writing and so far as practicable shall include an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and back-

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ground, social, economic and educational background, job experience and occupational skills and aptitude and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included.

(d) Before making disposition in the case of person convicted of a felony or misdemeanor, the court may order the offender to submit to psychiatric observation or examination. The offender may be committed for this purpose for a period not exceeding twenty (20) days to a facility within or licensed by the department of mental health, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court in writing at such time as the court directs.

(e) If, after presentence investigation, the court desires additional information concerning an offender, it may order that he be committed, for a period not exceeding ninety (90) days, to the custody of the Department of Corrections, for observation and study at an appropriate reception or classification center before making a final disposition in the case. The department shall advise the court of its findings and recommendations on or before the expiration of such ninety-day period. If the offender is thereafter sentenced to imprisonment, the period of such commitment for observation shall be deducted from the maximum term of such sentence.

§ 80.14. Presentence Report: Use Regulated.

(a) The presentence report shall not be a public record. It may be made available only to the sentencing court, to any reviewing court where relevant to an issue on which an appeal has been taken, to any examining facility, correctional institution, probation or parole department for use in the treatment or supervision of the offender and to the parties as provided in this Section.

(b) At least two (2) days before imposing sentence the court shall furnish the offender, or his counsel if he is so represented, a copy of the report of the presentence investigation exclusive of any recommendations as to sentence, unless in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the offender or his counsel an opportunity to comment thereon.

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(c) If the court is of the view that there is information in the presentence report which should not be disclosed under Subsection (b), the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the offender or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(d) Any material disclosed to the offender or his counsel shall at the same time be disclosed to the attorney for the Government.

(e) Any copies of the presentence investigation report made available to the offender or his counsel and the attorney for the Government shall be returned to the court immediately following the imposition of sentence. Copies of the presentence investigation report shall not be made by the offender, his counsel or the attorney for the Government.

§ 80.16. Sentence of Corporation.

(a) The court may suspend the imposition of sentence of a corporation which has been convicted of an offense or may sentence it to pay a fine or make restitution authorized by § 80.50.

(b) When a corporation is convicted of a crime or a high managerial agent of a corporation is convicted of a crime committed in the conduct of the affairs of the corporation, the court, in sentencing the corporation or the agent, may direct the prosecuting attorney to institute civil proceedings in the Superior Court to forfeit the charter of a corporation organized under the laws of this Territory or to revoke the certificate authorizing a foreign corporation to conduct business in this Territory. In such proceedings, the court may order the charter forfeited or the certificate revoked upon finding:

(A) that the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, intentionally engaged in a persistent course of criminal conduct; and

(B) that for the prevention of future criminal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

§ 80.18. Chapter Not Applicable to Youth Offenders.

Nothing in this Chapter shall affect the power of the court to deal with a youth offender as defined by § 83.15 in the manner provided by § 83.35.

§ 80.20. Civil Commitments in Lieu of Prosecution in Certain Cases.

(a) When a person prosecuted for a felony of the third degree, misdemeanor or petty misdemeanor is a chronic alcoholic, narcotic addict or person suffering from mental abnormality, the court may:

(1) order the civil commitment of such person to a hospital or other institution for medical, psychiatric or other rehabilitative treatment; and

(2) dismiss the prosecution.

The order of commitment may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

(b) The court shall not make an order under Subsection (a) unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

§ 80.22. Reduction by Court of Degree of Offense.

If, when a person has been convicted of an offense, the court, having regard to the nature and circumstances of the offense and to the history and character of the offender, is of the view that it would be unduly harsh to sentence the offender in accordance with the code, the court may enter judgment for a lesser included offense and impose sentence accordingly.

**ARTICLE 2
IMPRISONMENT**

- § 80.30. Duration of Imprisonment.
- § 80.30.1. Mandatory Sentencing for Persons Convicted of a Third-Degree Felony Relative the Possession of Methamphetamine.
- § 80.31. Prison Terms for First Offenders.
- § 80.31.1. Mandatory Sentencing for First-time Offenders Convicted of a Third-Degree Felony Relative to the Possession of Methamphetamine.
- § 80.32. Extended Terms Allowed.
- § 80.33. Prison Terms for Drug Offenders. [Repealed]
- § 80.33.1. Fines for Drug Offenses. [Repealed]

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- § 80.33.2. Additional Fines in Drug Offenses. [Repealed]
- § 80.33.3. Penalty for Continuing Criminal Enterprise Relative to a Controlled Substance. [Repealed]
- § 80.33.5. Information for Sentencing. [Repealed]
- § 80.33.6. Establishing Previous Convictions. [Repealed]
- § 80.33.7. Penalties [Repealed]
- § 80.33.8. Same. [Repealed]
- § 80.33.9. Second or Subsequent Offenses. [Repealed]
- § 80.33.10. Additional Penalties. [Repealed]
- § 80.33.11. Penalties for Violations of Drug Free School Zones Act. [Repealed]
- § 80.33.12. Failure to Report Violations of the Drug Free School Zones Act [Repealed]
- § 80.33.13. Penalties for Minors in Violation of the Drug Free School Zones Act. [Repealed]
- § 80.34. Misdemeanor & Petty Misdemeanor Sentences.
- § 80.36. Same.
- § 80.37. Deadly Weapons Used in Felonies; Sentence.
- § 80.37.5. Felony Committed on Release.
- § 80.38. Extended Terms for Felonies: When Allowed: Repeat Offenders.
- § 80.40. Extended Terms for Misdemeanor: When Allowed: Repeat or Multiple Offenders.
- § 80.42. Extended Term by Petition of Department of Corrections.
- § 80.44. Previous Convictions Defined.
- § 80.46. Credit for Prior Detention.
- § 80.48. Extension of Limits of Confinement: Failure to Adhere to Conditions Punished: Failure to Return is Escape.
- § 80.49. Extension of Limits of Confinement for Humanitarian Reasons: Time Limit: Failure to Return is Escape.

§ 80.30. Duration of Imprisonment.

Except as otherwise provided by law, a person who has been convicted of a felony may be sentenced to imprisonment as follows:

- (a) In the case of a felony of the first degree, the court shall impose a sentence of not less than five (5) years and not more than twenty (20) years;

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(b) In the case of a felony of the second degree, the court shall impose a sentence of not less than three (3) years and not more than ten (10) years; and

(c) In the case of a felony of the third degree, the court may impose a sentence of not more than five (5) years.

SOURCE: Enacted 1977; repealed and reenacted by P.L. 14-143, eff. 10/01/78.

COURT DECISIONS: D.C.GUAM: APP. DIV. 1981 It is proper to admit reliable evidence concerning prior illegal acts at sentencing, even though these acts did not result in convictions, when the evidence is supported. In any event, the defendant received a two-year sentence of a maximum of five years even with the admission of the evidence complained of. *People v. Santos*, Case #CR-80-034A.

D.C.GUAM: APP. DIV. 1982 We find that § 80.30 is the general sentencing statute to be applied and the presentence report properly stated defendant had a prior conviction as required by statute. The judgment of the trial court is therefore affirmed.

We interpret the language of § 80.30 as the general sentencing statute and the correct code section to apply to this case. Section 80.31 allows for a lesser penalty for a first offense in the discretion of the court; § 80.32 allows for a greater penalty than that provided in § 80.30, also in the court's discretion. *People v. Salas*, D.C. App. 82-48A (1982). *Aff'd*, CA9 1984 (unpublished) 730 F.2d 768.

D.C.GUAM: APP. DIV. 1986 The aggravated assault statute, § 19.20 of the Criminal and Correctional Code of Guam, (FN2) was enacted in its present form on January 1, 1978. The penalty provision for § 19.20, which is § 80.30 of the Guam Criminal and Correctional Code, [9 GCA] was also enacted at this same time. As previously stated, however, § 80.37 was not adopted by the Guam Legislature until October 1, 1978, under Public Law 14-143. Under this same Public Law 14-143, the Guam Legislature also repealed and reenacted Section 80.30, the aggravated assault penalty provision. Had the Guam Legislature wished to exclude any felony from the reach of § 80.37, the Legislature could have easily done so under Public Law 14-143. It obviously chose not to. This legislative inaction, together with the clear and unambiguous language of > Section 80.37 and the legislative history of § 80.37 evidences that the Guam Legislature intended to enhance the punishment for all those who possess or use a deadly weapon "in the commission of a felony punishable under the laws of Guam." See *People of the Territory of Guam v. Snaer*, 758 F.2d 1341, 1344 (9th Cir., 1985), cert. denied --- U.S. ---, 106 S.Ct. 90, 88 L.Ed.2d 74 (1985). 1986 WL 68911, *People of Territory of Guam v. Iglesias*, (D.Guam App.Div. 1986)

D.C.GUAM: APP. DIV. 1990 This finding is erroneous but in defendant's favor. § 80.31 sets forth the applicable prison terms for first offenders but applies only to "the cases to which § 80.30 is applicable." § 80.30 sets forth the applicable prison terms for all offenses "[e]xcept as otherwise provided by law." § 40.20 describes the acts which constitute second degree robbery and sets forth prison terms specifically applicable to second degree robbery convictions. Thus, §§ 80.30 and > 80.31 do not apply to second degree robbery convictions because § 40.20 "otherwise provide[s]" for sentencing. The second degree robbery conviction in this case therefore carries a

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maximum sentence of ten years. *People v. Chargualaf*, 1990 WL 320350, D.C. Cr. 88-068A.

§ 80.30.1. Mandatory Sentencing for Persons Convicted of a Third-Degree Felony Relative to the Possession of Methamphetamine.

Except as stipulated in 9 GCA § 80.31.1, the court shall impose a sentence of imprisonment of no less than three (3) years and no more than five (5) years, and a fine of fifteen thousand dollars (\$15,000), on persons convicted of a third-degree felony under the provisions of 9 GCA § 67.52, when the controlled substance the person is convicted of possessing is the substance known as methamphetamine. Sentence in these cases shall also include mandatory community service of no less than one hundred and fifty (150) hours, mandatory enrollment and attendance in a drug rehabilitation program at the Department of Mental Health and Substance Abuse, and a mandatory term of probation of five (5) years.

SOURCE: Added by P.L. 23-58:3.

§ 80.31. Prison Terms for First Offenders.

In the cases to which § 80.30 is applicable as to the sentencing of the person, a person who has not previously been convicted of a criminal offense and has been convicted of a felony for the first time may be sentenced to imprisonment as follows:

(a) In the case of a felony of the first degree, the court shall impose a sentence of not less than three (3) years and not more than fifteen (15) years;

(b) In the case of a felony of the second degree, the court shall impose a sentence of not less than one (1) year and not more than eight (8) years; and

(c) In the case of a felony of the third degree, the court may impose a sentence of not more than three (3) years.

SOURCE: Added by P.L. 14-143, eff. 10/01/78.

§ 80.31.1. Mandatory Sentencing for First-Time Offenders Convicted of a Third-Degree Felony Relative to the Possession of Methamphetamine.

In cases where 9 GCA § 80.30.1, is applicable to the sentencing of a person, a person who has not been previously convicted of a felony relative to the possession of any controlled substance and has been convicted of a felony for the first time relative to possession of methamphetamine shall be

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sentenced to a term of imprisonment of no more than three (3) years and a fine of five thousand dollars (\$5,000). Sentence in these cases must also include mandatory community service of no less than one hundred and fifty (150) hours, mandatory enrollment and attendance in a drug rehabilitation program at the Department of Mental Health and Substance Abuse or any other drug rehabilitation program approved by the Superior Court, and a mandatory term of probation of five (5) years.

SOURCE: Added by P.L. 23-58:4.

§ 80.32. Extended Terms Allowed.

In the cases designated in §§ 80.38 and 80.42, a person who has been convicted of a felony may be sentenced to an extended term of imprisonment as follows:

(a) In the case of a felony of the first degree, for a sentence of life imprisonment;

(b) In the case of a felony of the second degree, the court may impose a sentence of not less than five (5) years and not more than twenty (20) years; or

(c) In the case of a felony of the third degree, the court may impose a sentence of not less than three (3) years and not more than ten (10) years.

SOURCE: Enacted 1977; repealed and reenacted by P.L. 14-143, eff. 10/01/78.

§ 80.33. Prison Terms for Drug Offenders.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.1. Fines for Drug Offenses.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.2. Additional Fines in Drug Offenses.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.3. Penalty for Continuing Criminal Enterprise Relative to a Controlled Substance.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

NOTE: § 80.33.4 Omitted.

§ 80.33.5. Information for Sentencing.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.6. Establishing Previous Convictions.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.7. Penalties.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.8. Same.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.9. Second or Subsequent Offenses.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.10. Additional Penalties.

[Repealed]

SOURCE: Added by P.L. 14-141, eff. 09/01/78. Repealed and reenacted by P.L. 24-149:2.

§ 80.33.11. Penalties for Violations of Drug Free School Zones Act.

[Repealed]

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SOURCE: Added by P.L. 23-87. Original section created by this law, 180.33.01 was recodified by Compiler. Repealed by P.L. 26-125:8 as part of setting up a new Drug Court with its own set of penalties. The same law repealed 80.33.12 and 80.33.13 for the same reasons.

§ 80.33.12. Failure to Report Violations of the Drug Free School Zones Act.

[Repealed]

§ 80.33.13. Penalties for Minors in Violation of the Drug Free School Zones Act.

[Repealed]

§ 80.34. Misdemeanor & Petty Misdemeanor Sentences.

Except as otherwise provided by § 80.36, a person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment, as follows:

(a) in the case of a misdemeanor, the court shall set a maximum term not to exceed one (1) year;

(b) in the case of a petty misdemeanor, the court shall set a definite term not to exceed sixty (60) days.

SOURCE: G.P.C. § 19; *M.P.C. § 6.08; Cal. § 320 (1971); Mass. ch. 264, § 10; N.J. § 2C:43-8.

CROSS-REFERENCES: § 680.1(b), Code Civ. Proc. (Amended by Section 28, P.L. 13-187) - Rights to jury trial.

COMMENT: § 80.34 provides the basic terms of imprisonment which may be imposed upon a conviction for a misdemeanor or petty misdemeanor. Under Subsection (a) only a maximum term is provided. The Parole Board will determine the actual release date. Under Subsection (b), the sentencing judge sets a definite term and the Parole Board is neither required nor permitted to change the release date so established.

It is important to note that § 680.1(b) of the Code of Civil Procedure has been amended by P.L. 13-187 (companion amendatory bill to this Title) so that there is no absolute right to a jury trial in cases of a petty misdemeanor.

§ 80.36. Same.

In the cases designated in §§ 80.40 and 80.42, a person who has been convicted of a misdemeanor may be sentenced to an extended maximum term of imprisonment not to exceed three (3) years.

SOURCE: G.P.C. §§ 666, 667; *M.P.C. § 6.09.

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CROSS-REFERENCES: §§ 80.40, 80.42 -Extended terms, criteria.

COMMENT: § 80.36 sets the limit upon the maximum extended terms which may be imposed pursuant to §§ 80.40 or 80.42. It should be noted that no authority to impose a minimum term is provided, hence the authority to fix a release date lies with the Parole Board.

§ 80.37. Deadly Weapons Used in Felonies; Sentence.

Whoever unlawfully possesses or uses a deadly weapon in the commission of a felony punishable under the laws of Guam shall, in addition to the punishment imposed for the commission of such felony, be imprisoned for a term of not less than five (5) years nor more than twenty-five (25) years, and shall be fined not less than one thousand dollars (\$1,000), but not more than five-thousand (\$5,000), which fine shall be payable to the Criminal Injuries Compensation fund. The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment. No person convicted and sentenced hereunder shall be eligible for parole or probation until he shall have served at least five (5) years in prison. No person convicted or sentenced hereunder shall be eligible to participate in any work release program until he shall have served at least five (5) years. The term required to be imposed by this Section shall not run concurrently with any term of imprisonment imposed for the commission of any other felony.

SOURCE: Added by P.L. 14-143, eff. 10/01/78. Amended by P.L. 23-132:2 (Dec. 30, 1996).

§ 80.37.5. Felony Committed on Release.

(a) Whoever commits a felony punishable under the laws of Guam while on release on a felony charge pursuant to Chapter 40 (Criminal Procedure) of Title 8, Guam Code Annotated, shall, in addition to the sentence imposed for the crime committed while on release, be imprisoned for a term of not less than five (5) years nor more than twenty-five (25) years.

(b) A sentence imposed under subsection (a) of this section shall include a special parole term of not less than three (3) years nor more than five (5) years in addition to the term of imprisonment. No person convicted and sentenced under this section shall be eligible for parole or probation until he serves at least five (5) years in prison.

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(c) The term required to be imposed under this section shall run consecutive to any term of imprisonment imposed for the commission of any other felony.

SOURCE: Added by P.L. 20-111:2.

§ 80.38. Extended Terms for Felonies: When Allowed: Repeat Offenders.

The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the grounds specified in this Section. The finding of the court shall be incorporated in the record:

(a) The offender is a persistent offender whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the offender is over twenty-one (21) years of age and has previously been convicted as an adult of two (2) felonies or of one (1) felony and two (2) misdemeanors.

(b) The offender is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted. The court shall not make such a finding unless:

(1) the offender is being sentenced for two (2) or more felonies, or is already under sentence of imprisonment for felony, or admits in open court the commission of one or more other felonies and asks that they be taken into account when he is sentenced; and

(2) the longest sentences of imprisonment authorized for each of the offender's crimes, including admitted crimes taken into account, if made to run consecutively, would exceed in length the maximum of the extended term imposed.

(c) The offender is a dangerous, mentally abnormal person whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the offender has been subjected to a psychiatric examination resulting in the conclusions that his mental condition is gravely abnormal; that his criminal conduct has been characterized by a pattern of repetitive or compulsive behavior or by persistent aggressive behavior with heedless indifference to consequences; and that such condition makes him a serious danger to others.

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SOURCE: G.P.C. §§ 648, 666, 667a, 668; *M.P.C. § 7.03; Cal. § 207 (T.D.2 1968); N.J. § 2C:44-3.

COMMENT: § 80.38 states the circumstances and criteria under which felony offenders may be sentenced to the extended terms provided by § 80.32. The present sentencing structure provides simply for an outer limit on the length of sentences which may be imposed for each offense. These limits control, no matter how aggravated the particular offense, nor how depraved the individual offender. As a natural result, the authorized sentences are fixed with the worst cases in mind, and hence tend to be considerably higher than necessary for the average case. As the result, the gravity of the offenses tend to be distorted. As a practical consequence, the sentence imposed in the average case tends to be increased.

The Commission believes that a far better approach is to provide the basic limits geared to the typical case and authorize increases based upon the existence of factors which seem to call for a more severe disposition. The Model Code, the Model Sentencing Act and the ABA, Standards for Criminal Justice, Sentencing Alternatives and Procedures § 2.5 have all taken this approach.

The Model Penal Code stands alone in recommending extended terms for misdemeanors. The Commission believes that such terms can be justified, indeed it may be necessary, if the "ordinary" term has been significantly reduced by this Code and if the classification of offenses tends to downgrade crimes from what formerly may have been felonies. There is, of course, an intimate relationship between the classification of crimes, the ordinary term and the extended term. The Commission has attempted to strike a balance between each of these different areas. In doing so, the Commission has followed most closely the Model Penal Code. However, § 80.42 is based upon a California proposal and other modifications were suggested by other proposals. In short, we have presented a composite which we feel most suited to the needs of Guam.

Subsections (d) of both §§ 80.38 and 80.40 as contained in the Model Penal Code have been deleted here. These Sections deal with a "professional criminal," but have received only a limited endorsement from the ABA and the New Jersey Commission. Further, such Subsections would require full hearings which, being lengthy and expensive would tend to outweigh their effectiveness.

§ 80.40. Extended Terms for Misdemeanor: When Allowed: Repeat or Multiple Offenders.

The court may sentence a person who has been convicted of a misdemeanor to an extended term of imprisonment if it finds one or more of the grounds specified in this Section. The findings of the court shall be incorporated in the record:

(a) The offender is a persistent offender whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the offender has previously been convicted as an adult of two (2) crimes.

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(b) The offender is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted. The court shall not make such a finding unless:

(1) the offender is being sentenced for two (2) or more misdemeanors or one misdemeanor and two (2) or more petty misdemeanors or is already under sentence of imprisonment for crimes of such grades, or admits in open court the commission of crimes of such grades and asks that they be taken into account when he is sentenced; and

(2) the longest sentences of imprisonment authorized for each of the offender's crimes, including admitted crimes taken into account, if made to run consecutively, would exceed in length the maximum of the extended term imposed.

(c) The offender is an alcoholic, narcotic addict or person of abnormal mental condition who requires rehabilitative treatment for a substantial period of time. The court shall not make such a finding unless with respect to the particular category to which the offender belongs, the Director of Corrections has certified that there is a specialized institution or facility which is satisfactory for the rehabilitative treatment of such persons.

SOURCE: G.P.C. §§ 648, 666, 667; *M.P.C. § 7.04.

COMMENT: See Comment to § 80.38. § 80.40(c) has been inserted by the Commission on the condition that such facility exists and it is not expected that this Subsection will be implemented unless Guam's facilities for such persons are improved.

§ 80.42. Extended Term by Petition of Department of Corrections.

On petition of the Director of Corrections to the court in which the person was originally sentenced to imprisonment the court may extend his sentence to the terms prescribed by §§ 80.32 and 80.36 if it finds that such extension is necessary for protection of the public. In the case of a person originally sentenced to imprisonment for a petty misdemeanor, the court may extend his sentence to a term not to exceed two (2) years. Such a finding, which must be incorporated in the record, shall be based on the grounds that:

(a) the person's record, both within and without the correctional system, reveals a clear pattern of assaultive or sexually aggressive behavior; and

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(b) there is a substantial risk that he will at some time in the future inflict death or serious bodily injury upon another.

In making such a finding, the court shall proceed upon the same basis as in an original sentencing hearing and the person shall have the same rights as any person being sentenced.

SOURCE: *Cal. § 208 (T.D.2 1968); Cal. § 355 (1971).

COMMENT: This is a new, and radically different Section. Note that petty misdemeanors are included within this Section, while being excluded from § 80.40. This is of doubtful constitutional validity in that most defendants accused of petty misdemeanors will have not had a jury trial. If this Section is used in such cases, the result would be a person imprisoned for up to two (2) years without having had a right to a jury trial. It may be that the court, because of this Section will ignore § 680.1(b) of the Code of Civil Procedure and grant petty misdemeanor a right to a jury trial since they would be subject to possible imprisonment for more than sixty (60) days. This was not the intent of the Commission, but may be mandated by the Constitution. If this result comes about, it would appear to this Compiler that § 680.1(b) of the Code of Civil Procedure should take precedence in the interest of expeditious handling of petty misdemeanors, and this Section be ignored.

§ 80.44. Previous Convictions Defined.

(a) For purposes of Subsection (a) of § 80.38 or § 80.40, a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been a felony if sentence of death or of imprisonment in excess of one (1) year was authorized under the law of such other jurisdiction, of a misdemeanor if sentence of imprisonment in excess of sixty (60) days but not in excess of a year was authorized and of a petty misdemeanor if sentence of imprisonment for not more than sixty (60) days was authorized.

(b) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of §§ 80.38, 80.40 or 80.44, although sentence or the execution thereof was suspended, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence. When the defendant has asked that other crimes admitted in open court be taken into account when he is sentenced and the court has not rejected such request, the sentence shall bar the prosecution or conviction of the defendant in this Territory for any such admitted crime.

SOURCE: *M.P.C. § 7.05; N.J. § 2C:44-4.

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COMMENT: Under Subsection (a) of this Section, the seriousness of the crime is measured by the standards of the jurisdiction where the crime was committed. Under Subsection (b) emphasis is conviction, not sentence.

§ 80.46. Credit for Prior Detention.

(a) When an offender who is sentenced to imprisonment has previously been detained in any territorial state or local correctional or other institution, for the conduct for which such sentence is imposed, such period of detention shall be deducted from the maximum and minimum term of such sentence. The officer having custody of the offender shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the offender prior to sentence in any territorial, state or local correctional or other institution, and the certificate shall be attached to the official records of the offender's commitment.

(b) When a judgment of conviction is vacated, or a sentence is revised or reviewed and a new sentence is thereafter imposed upon the offender for the same crime, the period of detention and imprisonment previously served therefor shall be deducted from the maximum and minimum term of the new sentence. The officer having custody of the offender shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be attached to the official records of the offender's new commitment.

SOURCE: M.P.C. § 7.09; *Mass. ch. 264, § 14; cf. N.J. § 2C:44-8.

CROSS-REFERENCES: ABA, Sentencing Alternatives and Procedures § 3.6 (Approved Draft 1968).

COMMENT: § 80.46 implements the Standards proposed by the ABA.

§ 80.48. Extension of Limits of Confinement: Failure to Adhere to Conditions Punished: Failure to Return is Escape.

(a) Except as otherwise provided by law, either the court at the time of sentencing or the Director of Corrections after the offender has been placed in custody, may extend the limits of his confinement to permit the offender to continue in his regular employment or educational program or if the prisoner does not have regular employment or a regular educational program, to secure employment or education. Any employment or education so secured must be suitable for the offender. Such employment or educational program if such educational program includes earnings by the offender, must be at a wage at least as high as the prevailing wage for similar work in the Territory and in accordance with the prevailing working

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conditions in the Territory. In no event may any such employment or educational program involving earnings by the offender be permitted where there is a labor dispute in the establishment in which the offender is or is to be employed or educated. Whenever the offender is not employed or being educated and between the hours or periods of employment or education, he shall be confined in such facility designated by the court or Director of Corrections.

(b) The earnings of the offender may be collected by the Director of Corrections. From such earnings, the Director may deduct such costs incident to the offender's confinement as the Director deems appropriate and reasonable. The Director may also deduct payments for the support of the offender's dependents and forward such payments to them.

(c) In the event the offender violates the conditions laid down for his conduct, custody, education or employment, the Director (or the court, if the limits of confinement were originally extended by the court) may order the balance of the offender's sentence to be spent in actual confinement subject to any release on parole pursuant to Article 5 (commencing with § 80.70).

(d) Willful failure of the offender to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement pursuant to this Section is punishable as an escape.

(e) Except for inmates participating in the Work and Educational Programs, all inmates sentenced to the custody of the Department of Corrections and in the Adult Correctional Facility shall be issued uniforms which they shall wear at all times they are outside the facility. The uniform shall be prominently marked to indicate that the person wearing it is an inmate. The uniforms shall at the least have the letter "P" permanently marked on the front and back of the shirt or top portion of the uniform. All inmates including those in the Work and Educational Programs shall have as many haircuts as necessary to maintain a short style so that hair does not extend over the ear or over the shirt collar of the uniform. No beards shall be worn by inmates.

(f) The remaining balance of earnings by an inmate from participating in a Work Release Program shall be deposited into the Criminal Injuries Compensation Fund (the "Fund"). After complying with subsection (b) of this Section, associated with support of dependents and debts, the remaining balance shall be deposited in the Fund.

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(g) Termination of Eligibility; Work and Education Programs. Notwithstanding Subsection (c) of this Section, any inmate who has been placed under the work and educational programs must comply with the conditions laid down for the inmate's conduct while enjoying the benefits of the program. Any violations of the conditions, such as failure of the offender to return to the place of confinement within the time pursuant to the terms and conditions of the programs, shall suspend the offender's eligibility to the programs as outlined below.

Any inmate who is found guilty of escape or attempted escape shall immediately be removed from work and educational programs and shall not be eligible for participation in work and educational programs for a period of not less than five (5) years. Any inmate not currently participating or eligible to participate in work or educational programs and is found guilty of escape or attempted escape shall not be eligible to participate in work or educational programs for a period of not less than five (5) years.

NOTE: Opinion of the Attorney General, Ref. DOC 87-1599, December 23, 1987, interpreted P.L. 19-11:15 (which added subsection (e)) with respect to its application. The cited Opinion discusses which inmates are mandated to wear uniforms and who are exempted; required markings on the uniforms; date and funding for implementation of the section.

SOURCE: G.P.C. §§ 1234b-1234d. Enacted 1977; Subsection (a) repealed and reenacted by P.L. 14-143, eff. 10/01/78; (e) added by P.L. 19-11:15; (f) added by P.L. 20-155:3; (g) added by P.L. 24-95:1.

CROSS-REFERENCES: Cal. Penal Code § 1208.

COMMENT: Note the effect of §§ 55015 and 39100.2 of the Government Code, both of which were added by P.L. 14-151, effective 10/18/78. Those sections provide that prisoners shall not be permitted outside the boundaries of the Guam Penitentiary without the express order of the Parole Board (§ 55015), and that prisoners shall not be allowed outside the boundaries of the Guam Penitentiary to participate in such programs as "Halfway House," "work release," "furlough" or any other extramural programs whatsoever without the permission of the Parole Board (§ 39100.2).

§ 80.48 is based upon the Guam Penal Code, but permits the sentencing court, as well as the Director of Corrections, to extend the limits of confinement.

COURT DECISIONS: Joaquin S.A. Mendiola v. Territorial Parole Board, Sup. Ct. 1981, Cr. No. Special Proceedings No. 185-81 held unconstitutional, as a violation of due process, §§ 55015 and 39100.2 of the Government Code.

§ 80.49. Extension of Limits of Confinement for Humanitarian Reasons.

(a) The Director of Corrections may extend the limits of the place of confinement of a prisoner entrusted to the Director's custody, when there is

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reasonable cause to believe the prisoner will honor the Director's trust, by authorizing the prisoner, under prescribed conditions, which shall include close supervision at all times by one (1) or more armed escorts, and twenty-four (24)-hour written notice to the Attorney General of Guam or the Chief Prosecutor, the Superior Court of Guam and the Guam Police Department, to visit a specifically designated place or places for a period *not to exceed* twenty-four (24) hours and return to the institution. An extension of limits may be granted only to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of necessary medical services not otherwise available, or for any other equally compelling reason consistent with the public interest and safety.

(b) An escape from supervision during an extension of limits period is punishable as a felony escape under Chapter 58 of Title 9 of the Guam Code Annotated.

SOURCE: G.P.C. § 1234a. Amended by P.L. 25-87:1 (11/23/99).

CROSS-REFERENCES: Cal. Penal Code § 1208(d).

COMMENT: The authority provided here is a narrow one limited to particular exceptional circumstances. It does not, however, restrict the much broader authority to provide regular programs involving partial confinement set forth in § 80.48. The court cannot participate under the circumstances provided by this Section. Therefore, the authority is given only to the Director of Corrections.

ARTICLE 3
FINES AND RESTITUTION

§ 80.50. Fines & Restitution as Sentence Allowed: Limited.

§ 80.52. Standards for Imposing Fines and/or Restitution.

§ 80.53. When Restitution Required.

§ 80.54. Time & Method of Payment.

§ 80.56. Consequences of Non-Payment.

§ 80.58. Petition for Revocation of Fine: Conditions.

§ 80.50. Fines & Restitution as Sentence Allowed: Limited.

A person who has been convicted of an offense may be sentenced to pay a fine or to make restitution not exceeding:

(a) Ten Thousand Dollars (\$10,000.00), when the conviction is of a felony of the first or second degree;

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(b) Five Thousand Dollars (\$5,000.00), when the conviction is of a felony of the third degree;

(c) One Thousand Dollars (\$1,000.00), when the conviction is of a misdemeanor;

(d) Five Hundred Dollars (\$500.00), when the conviction is of a petty misdemeanor or violation;

(e) Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this Section, the term "gain" means the amount of money or the value of the property derived by the offender and the term "loss" means the amount of value separated from the victim;

(f) Any amount specifically authorized by statute.

The restitution ordered paid to the victim shall not exceed his loss.

SOURCE: G.P.C. § 19; M.P.C. § 6.03; Cal. § 325 (1971); Mass. ch. 264, § 15; *N.J. 2C:23-3.

CROSS-REFERENCES: II N.J. Criminal Law Revision Commission. N.J. Penal Code 315 (Final Report 1971).

COURT DECISIONS: SUPER.CT. 1981 Defendants Stinson, Hartsock and the Guam Federation of Teachers are guilty of contempt of court in that they have encouraged, aided and taken part in a strike against the government of Guam, all as shown beyond a reasonable doubt in evidence presented before the court. *People v. Guam Federation of Teachers et al.*, Civil Case #6-81.

COMMENT: § 80.50 presents a new and welcomed provision to the Guam sentencing scheme, restitution. Under the Penal Code, restitution was not mentioned to any great degree, but was used on appropriate occasions by the court as a part of the conditions of probation. This Section, also, has eliminated any requirement that the defendant pay any or all cost of prosecution. The New Jersey Law Revision Commission felt that such requirements infringed upon the defendant's right to trial. However, Subsection (f) would permit the cost of prosecution to be recovered in such cases as prosecution under the Internal Revenue Code, where that Code specifically provides.

§ 80.52. Standards for Imposing Fines and/or Restitution.

(a) The court shall not sentence an offender only to pay a fine or to make restitution, when any other disposition is authorized by law, unless

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having regard to the nature and circumstances of the offense and to the history and character of the offender, it is of the opinion that the fine or restitution alone is appropriate and suffices for the protection of the public.

(b) The court shall not sentence an offender to pay a fine or make restitution in addition to a sentence of imprisonment or probation unless:

(1) the offender has derived a pecuniary gain from the offense; or

(2) the court believes that a fine or restitution is specially adapted to deterrence of the type of offense involved or to the correction of the offender.

(c) The court shall not sentence an offender to pay a fine or make restitution unless the offender is or, given a fair opportunity to do so, will be able to pay the fine or restitution. The court shall not sentence an offender to pay a fine unless the fine will not prevent the offender from making restitution to the victim of the offense.

(d) In determining the amount and method of payment of a fine or restitution, the court shall take into account the financial resources of the offender and the nature of the burden that its payment will impose.

(e) When an offender is sentenced to pay a fine or to make restitution, the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid. The response of the court to non-payment shall be determined only after the fine has not been paid and as provided in § 80.56.

SOURCE: M.P.C. § 7.02; Mass. ch. 264, § 16; *N.J. § 2C:44-2.

CROSS-REFERENCES: ABA, Sentencing Alternatives and Procedures § 2.7 (1968).

COMMENT: Nothing in this Section is intended to preclude, within certain limits, the imposition of fines on the basis of a schedule; e.g., for traffic violations, littering offenses, etc. Here, we assume that in most cases the defendant will simply plead guilty and pay the fine. Even where a court appearance is required, or occurs, a fine may be imposed on the basis of schedule and, if necessary the defendant can be asked whether he can afford to pay the fine.

§ 80.53. When Restitution Required.

The court shall require restitution in all cases wherein the offender has been convicted of a crime involving damage to property of the victim when the offender is or, given a fair opportunity to do so, will be able to pay the restitution.

SOURCE: Added by P.L. 16-86.

§ 80.54. Time & Method of Payment.

(a) When an offender is sentenced to pay a fine or to make restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine or restitution shall be payable forthwith.

(b) When an offender sentenced to pay a fine or make restitution is also sentenced to probation, the court may make the payment a condition of probation.

(c) The offender shall pay a fine, restitution or any installment thereof to the court. In the event of default in payment, the Attorney General shall take appropriate action for its collection.

(d) Unless otherwise provided by law, all fines collected shall be paid over to the Treasurer of the territory of Guam and shall become part of the general funds of the Territory and shall be subject to general appropriation.

SOURCE: See Guam §§ 1205, 1570; M.P.C. § 302.1; Mass. ch. 264, § 17; *N.J. § 2C:46-1.

CROSS-REFERENCES: § 80.56 -Non-Payment.

§ 80.56. Consequences of Non-Payment.

(a) When an offender sentenced to pay a fine or make restitution defaults in the payment thereof or of any installment, the court, upon the motion of the Attorney General or upon its own motion, may require him to show cause why his default should not be treated as contumacious and may issue a summons or a warrant of arrest for his appearance. Unless the offender shows that his default was excusable, the court shall find that his default was contumacious and may order him committed until the fine or restitution or a specified part thereof is paid. The term of imprisonment for such contumacious non-payment of the fine or restitution shall be specified in the order of commitment and shall not exceed one day for each Ten Dollars (\$10.00) of the fine or restitution, thirty (30) days if the fine or

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restitution was imposed upon conviction of a violation or a petty misdemeanor or one (1) year in any other case, whichever is the shorter period. When a fine or restitution is imposed on a corporation or an unincorporated association it is the duty of the person or persons authorized to make disbursements from the assets of the corporation or association to pay it from such assets and their failure so to do may be held contumacious under this Subsection. A person committed for non-payment of a fine or restitution shall be given credit towards its payment for each day of imprisonment, at the rate specified in the order of commitment.

(b) If it appears that the offender's default in the payment of a fine or restitution is not contumacious, the court may make an order allowing the offender additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or restitution or the unpaid portion thereof in whole or in part.

(c) Upon any default in the payment of a fine or restitution or any installment thereof, execution may be levied and such other measures may be taken for the collection of the fine or restitution or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the offender in an action on a debt. The levy of execution for the collection of a fine or restitution shall not discharge an offender committed to imprisonment for non-payment until the amount of the fine or restitution has actually been collected.

SOURCE: G.P.C. §§ 1205, 1206, 1214, 1397; M.P.C. § 302.2; Mass. ch. 264, § 18; *N.J. § 2C:46-2.

CROSS-REFERENCES: ABA, Sentencing Alternatives and Procedures § 6.56, § 80.66 -Revocation of Probation.

§ 80.58. Petition for Revocation of Fine: Conditions.

An offender who has been sentenced to pay a fine and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for a revocation of the fine or of any unpaid portion thereof. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the fine or the unpaid portion thereof in whole or in part.

ARTICLE 4

PROBATION

- § 80.60. Standards for Imposing or Withholding Probation.
- § 80.62. Conditions Which Court May Attach to Probation.
- § 80.64. Term of Probation: Modification of Probation.
- § 80.66. Revocation of Probation: When Permitted.
- § 80.68. Revocation: Hearing Required; Release Permitted; Confinement Provided for.

§ 80.60. Standards for Imposing or Withholding Probation.

(a) When Sentence May Not Require Prison Term. The court, in its discretion, may make disposition in respect to any person who has been convicted of a crime without imposing sentence of imprisonment unless a minimum term is made mandatory by a provision of [sic] Guam Codes.

(b) Notwithstanding Subsection (a) the court shall not suspend imposition of sentence or place an offender on probation if, having due regard to the nature and circumstances of the crime and the history, character and condition of the offender, the court finds that imprisonment is necessary for the protection of the public because:

(1) there is undue risk that during the period of a suspended sentence or probation the offender would commit another crime;

(2) the offender is in need of correctional treatment that can be provided most effectively by commitment to an institution; or

(3) a lesser sentence would depreciate the seriousness of the offender's crime.

(c) The following factors, while not controlling, shall be accorded weight in determining whether to suspend imposition of sentence or to place the offender on probation whether:

(1) The offender's criminal conduct neither caused nor threatened serious harm.

(2) The offender did not contemplate that his criminal conduct would cause or threaten serious harm.

(3) There were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish a defense.

(4) The offender has compensated or will compensate the victim of his criminal conduct for the damage or injury which was sustained.

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(5) The offender has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime.

(6) The offender is particularly likely to respond affirmatively to probationary treatment.

(d) If a person who has been convicted of a crime is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance or direction that probation can provide.

SOURCE: See Guam § 1231; Rule 32(a), Rules of Cr. Proc.; cf. Cal. § 235 (1971); § 330; Mass. ch. 264, § 20; N.J. § 2C:44-1. Enacted 1977; Subsection (a) amended by P.L. 14-143, eff. 10/01/78; Subsection (c)(3) repealed by P.L. 14-143, eff. 10/01/78; Subsection (c)(4) Renumbered as § 80.60(c)(3) by P.L. 14-143, eff. 10/01/78; Subsection (c)(5) repealed by P.L. 14-143, eff. 10/01/78; Subsection (c)(6) renumbered as § 80.60(c)(4) by P.L. 14-143, eff. 10/01/78; Subsection (c)(7) renumbered as § 80.60(c)(5) by P.L. 14-143, eff. 10/01/78; Subsection (c)(8) repealed by P.L. 14-143, eff. 10/01/78; Subsection (c)(9) repealed by P.L. 14-143, eff. 10/01/78; Subsection (c)(10) renumbered as § 80.60(c)(6) by P.L. 14-143, eff. 10/01/78; Subsection (c)(11) repealed by P.L. 14-143, eff. 10/01/78.

CROSS-REFERENCES: ABA, Project on Standards for Criminal Justice. Probation §§ 1.1(a)-(c), 1.2, 1.3 (Approved Draft 1970) § 80.66.

COMMENT: No general preference is stated in favor of imprisonment or probation; however, Subsection (b) states three (3) factors, any one of which, if found to exist, require a sentence of imprisonment for the protection of the public. Subsection (c) lists factors which the court should weigh in favor of withholding imprisonment.

A sentence of probation no longer involves or requires suspension of the imposition or the execution of any other sentence. Nevertheless, where probation is revoked, the court has available the same sentencing alternatives that were available at the time of initial sentencing.

In 1978 the Legislature repealed a large number of subparagraphs of Subsection (c) with the effect that these subparagraphs no longer have any statutory weight in determining whether to suspend a sentence or the place the offender on probation. The Legislature felt that the statutory reference to these conditions weighed heavily in favor of probation or suspension of sentence when, in fact, the Legislature intended that, for the crimes involved, the offenders be placed in prison. The conditions eliminated referred to acting under strong provocation, the victim's inducing or facilitating the offense; the conduct resulting from circumstances unlikely to recur; history, character and attitudes of the offender which indicate that he is unlikely to commit another crime; and imprisonment would entail hardship to the offender or his dependents. The Legislature believed that such were not good reasons for suspending a sentence for one already convicted of a particular crime. Of course, it is recognized that the judge does not necessarily have to give his reasons for suspending sentence and may, in fact, consider some of the repealed matter in determining a sentence.

§ 80.62. Conditions Which Court May Attach to Probation.

(a) If the court suspends the imposition of sentence or places an offender on probation, it shall attach such reasonable conditions, authorized by this Section, as it deems appropriate to assist him to lead a law-abiding life.

(b) The court, as a condition of its order, may require the offender:

(1) to support his dependents and to meet his family responsibilities;

(2) to devote himself to an approved employment or occupation;

(3) to undergo available medical or psychiatric treatment and to enter and remain in a specified institution when required for that purpose;

(4) to pursue a prescribed secular course of study or vocation training;

(5) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;

(6) to refrain from criminal conduct or from frequenting unlawful places or consorting with specified persons;

(7) to refrain from possessing any firearm or other dangerous weapon;

(8) to pay any fine authorized by this Chapter;

(9) to make restitution of the fruits of his crime or to make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;

(10) to remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;

(11) to refrain from excessive use of alcohol and drug abuse;

(12) to report as directed to the court or the probation officer, to answer all reasonable inquiries by the probation officer and to permit the officer to visit him at reasonable times at his home or elsewhere;

(13) to satisfy any other conditions reasonably related to the rehabilitation of the offender or public safety or security.

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(c) The offender shall be given a statement in writing explicitly setting forth the conditions on which he is released on probation.

SOURCE: See G.P.C. § 1231; M.P.C. § 301.1; Cal. § 330 (1971); *Mass. ch. 264, § 21; N.J. 2C:45-1.

CROSS-REFERENCES: ABA, Probation §§ 3.1, 3.2 (1970).

§ 80.64. Term of Probation; Modification of Probation.

(a) If the court has suspended imposition of sentence or has placed an offender on probation, the period of the suspension or probation shall not exceed five (5) years for a felony, two (2) years for a misdemeanor or petty misdemeanor and one (1) year for a violation.

(b) At any time during the period of suspension or probation, upon a showing that such action will best satisfy the ends of justice and the best interests of the public and the offender, the court may modify or terminate the conditions to which the offender is presently subject.

Prior to modification the offender shall be given notice and a reasonable opportunity to be heard regarding any change in the conditions. All changes in conditions shall be given to the offender in writing.

(c) Any conditions imposed pursuant to § 80.62 shall automatically terminate upon the successful completion of the period of suspension or probation set by the court. The sentencing court may order an earlier termination whenever it appears that further continuation of conditions or supervision or enforced compliance with the terms of probation is unnecessary. Upon termination, an order of termination shall be rendered by the court and entered by the clerk in the minutes and a copy thereof mailed to the offender.

SOURCE: See G.P.C. §§ 1231, 1232; M.P.C. § 301.2(1); *Mass. ch. 264, § 22(a); N.J. § 2C:45-2(a).

CROSS-REFERENCES: ABA, Probation §§ 1.1(3), 3.3, 4.1-4.2 (1970).

§ 80.66. Revocation of Probation: When Permitted.

(a) At any time before the discharge of the offender or the termination of the period of suspension or probation:

(1) upon a showing of probable cause that an offender has violated a condition of his suspension or probation, the court may summon the offender to appear before it or may issue a warrant for his arrest. The warrant or summons shall be served in the manner provided by 8 GCA § 15.70 (Criminal Procedure). The offender may be arrested

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without a warrant only in those circumstances where such an arrest is otherwise permitted by law;

(2) the court, if satisfied that the offender has inexcusably failed to comply with a substantial requirement imposed as a condition of the order may revoke the suspension or probation and sentence or re-sentence the offender. Violation of a condition shall not result in revocation, however, unless the court determines that revocation under all the circumstances then existing will best satisfy the ends of justice and the best interests of the public.

(3) Upon showing of probable cause before the Court, pursuant to Subsection (a)(1), a summons or warrant shall issue and the period of probation shall thereby be tolled pending the hearing upon the motion and the decision of the Court. The period of tolling shall start on the date the summons or warrant is filed by the Clerk of Court and shall end on the date the Clerk of Court files a judge's written decision or the judge issues an oral decision in open Court, whichever first occurs, on whether the defendant violated a condition of probation. Unless otherwise ordered by the Court, the defendant's term of probation shall be extended for the number of days time is tolled. During the period the time is tolled, the defendant shall remain subject to all conditions of probation.

(4) In the event the Court, following a hearing, is satisfied that the defendant's failure to comply with the conditions of probation was excusable, the Court may order that the defendant may be credited with the tolled period for purposes of computation of the remaining probation, if any. However, if the defendant fails to comply with the terms of probation during the tolled period, another affidavit of probable cause or petition for revocation may be filed and time may be tolled again.

(b) When the court revokes a suspension or probation, it may impose on the offender any sentence that might have been imposed originally for the crime of which he was convicted.

(c) Notwithstanding any other provisions of the law, the Court may, upon good cause shown, extend probation beyond the terms set forth in § 80.64(a) up to a maximum additional term of one (1) year for petty misdemeanors and misdemeanors, and a maximum additional term of two (2) years for felonies.

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(d) The amendments made in Subsections (a) and (c) of this Section shall apply prospectively to criminal acts committed after the effective date of this Section. [8/14/1998]

SOURCE: G.P.C. § 1232; Rule 32(f), Rules of Cr. Proc.; M.P.C. § 301.3; Mass. ch. 264, § 23; N.J. § 2C:45-3. Subsection (a)(3) added by P.L. 24-239:15. Subsection (a)(4) added by P.L. 24-239:16. Subsection (c) added by P.L. 24-239:17. Subsection (d) added by P.L. 24-239:18. Date added by Compiler.

CROSS-REFERENCES: ABA, Probation 5.1-5.4 (1970).

§ 80.68. Revocation: Hearing Required; Release Permitted; Confinement Provided for.

(a) The court shall not revoke a suspension or probation or increase the requirements imposed thereby on the offender except after a hearing upon written notice to the offender of the grounds on which such action is proposed. The offender shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel.

(b) Pending the hearing required by Subsection (a), the offender may be released in the manner and subject to the conditions prescribed by Title 8 GCA Chapter 40 (Criminal Procedure) (commencing with § 40.10). However, if there is probable cause to believe that the offender has committed another crime or if he has been held to answer therefor, the court may commit him without bail, pending a determination of the charge by the court having jurisdiction thereof.

SOURCE: G.P.C. § 1232; Rule 32 (f), Rules of Cr. Proc.; *M.P.C. § 301.4; Mass. ch. 264, § 24; N.J. 2C:45-4.

**ARTICLE 5
PAROLE**

- § 80.70. When Parole Permitted.
- § 80.70.1. Definitions.
- § 80.71. Definition of Board as Territorial Parole Board.
- § 80.72. Exception for Parole Eligibility.
- § 80.74. Preparing Prisoner for Parole Hearing.
- § 80.76. Standards Governing Release on Parole.
- § 80.78. Records to be Made Available to Board.
- § 80.80. Conditions of Parole.

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- § 80.82. Sanctions for Violation of Parole.
- § 80.84. Revocation Hearing Required: Standards for Revocation of Parole.
- § 80.86. Prison Term After Revocation: Current Prisoners Provided for.
- § 80.88 Discretionary and Mandatory Release from Parole.

§ 80.70 When Parole Permitted.

(a) When Parole Permitted. An offender sentenced to a term of imprisonment may be released conditionally on parole upon completion of two-thirds (2/3) of his fixed sentence or thereafter in accordance with the provisions of this Article, provided that in the case of an offender sentenced to a term of imprisonment for the commission of a violent crime, such offender may be released conditionally on parole upon completion of eighty-five percent (85%) of his fixed sentence or thereafter in accordance with the provisions of this Article. Nothing in this Section shall be construed as limiting or mitigating in any fashion the discretionary or mandatory imposition of a sentence of life imprisonment without parole for any offense, as may be detailed elsewhere in this Title or the laws of Guam.

For the purposes of this Section, a violent crime is defined as one (1) or more of the following:

1. aggravated murder, as defined in 9 GCA § 16.30;
2. murder, as defined in 9 GCA § 16.40;
3. manslaughter, as defined in 9 GCA § 16.50, and when such manslaughter is not involuntary;
4. aggravated assault, as defined in 9 GCA § 19.20, and when it is a felony in the first degree;
5. kidnapping, as defined in 9 GCA § 22.20, and when it is a felony in the first degree;
6. first degree criminal sexual conduct, as defined in 9 GCA § 25.15;
7. second degree criminal sexual conduct, as defined in 9 GCA § 25.20;
8. aggravated arson, as defined in 9 GCA § 34.20;
9. first degree robbery, as defined in 9 GCA § 40.10; or
10. second degree robbery, as defined in 9 GCA § 40.20.

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(b) A sentence to a fixed term of imprisonment includes, as a separate portion of the sentence, a term of parole or of recommitment for violation of the conditions of parole which governs the duration of parole or recommitment after the offender's first conditional release on parole. The term is three (3) years unless the conviction was for a misdemeanor in which case it is one (1) year.

(c) If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the Territorial Parole Board but shall not exceed in length the longer of the unserved balance of:

(1) the parole term provided by Subsection (b); or

(2) the remainder of the original sentence determined from the date of conviction.

(d) When the parole term has expired or he has been sooner discharged from parole, an offender shall be deemed to have served his sentence and shall be released unconditionally.

(e) Notwithstanding any other provision of law to the contrary, all sentenced and incarcerated first offenders who have been convicted and sentenced to a prison term for non-violent or non drug offense(s) shall be eligible for parole after serving fifty percent of their prison term. All procedures for applying for parole, reviewing and granting parole under this section, except as stated herein, shall be governed by the provisions of Article 5 of this Chapter.

SOURCE: Compare Govt. Code §§ 39100, 39100.1, 39115-39917; M.P.C. § 6.10; Mass. ch. 264, §§ 26, 27; *N.J. § 2C:43-9. Enacted 1977; Subsections (a) and (b) repealed and reenacted by P.L. 14-143, eff. 10/01/78. Subsection (a) amended by P.L. 24-270.1. Subsection (e) added by P.L. 24-271:2.

CROSS-REFERENCES: N.J. Cr. Law Rev. Comm.; N.J. Penal Code 319-323 (Final Report, 1971); G.P.C. § 1231(b).

COMMENT: This Article proceeds on the view that conditional release on parole, with its accompanying supervision, is a normal and necessary state in the transition from prison life to full freedom in the community; and that it should, therefore, be the invariable incident of a prison sentence, not an exceptional act of grace bestowed upon good risks and withheld from the bad.

This concept requires the abandonment of the idea that the parole period is a portion of the original prison sentence not required to be served in prison. It calls for thinking of a period of supervised release - "parole term" - as the invariable incident of any prison sentence. The prison sentence determines the maximum period that may be

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served in prison prior to conditional release. This further period, which may or may not be within the limits of the original prison sentence, is by operation of law made an incident of any sentence of imprisonment for term.

A prison sentence, in short, contains two (2) parts. The first part determines when the offender may and when he must be released on parole. The second part, stated in this Article, determines when the offender may and when he must be discharged from parole. This approach is a substantial variation from the system formerly in effect. Under the Penal Code, the Parole Board's power to control a convicted person was limited by the maximum term of the sentence imposed upon him. Thus, if a person was released on parole with six (6) months of his total sentence remaining, his total parole term could be only six (6) months.

It should be noted that the "term" referred to in this Section does not refer to the method of indefinite sentencing formerly practiced by the State of California. Rather, it refers only to the situation where the judge sets the maximum term of imprisonment, and a minimum term where authorized, but that term is determined by law, not by some "Adult Authority." Thus, despite the wording, it appears that this sentencing does not differ that radically from the former method found in the Penal Code. Nevertheless, this Article does provide a variance from the Penal Code.

§ 80.70.1 Definitions.

For purposes of Article 5 of this Chapter:

(a) *Prison* shall mean any confinement facility under the direct or indirect supervision or control of the Department of Corrections ('DOC') any portion of which is designed to incarcerate sentenced offenders.

(b) *Rated Capacity* shall mean the total number of inmates who can be safely incarcerated in the Prison or any portion of the Prison as established by the Federal Bureau of Prisons or other Federal agency of the United States qualified to provide a rating or maximum number for a safe and controllable population for the Prison or any of its subunits.

(c) *Eligible for Parole* is when a sentenced and incarcerated offender may apply for release from confinement conditionally on parole to the Guam Parole Board pursuant to Article 5 of this Chapter.

(d) *Prison Population* shall mean the total number of incarcerated persons confined within the Prison or within a subunit of the Prison.

(e) *First Offenders* shall mean a convicted, sentenced and/or incarcerated person-who has no other prior conviction for any felony offense within Guam or any other jurisdiction other than the offense for which the person is convicted and/or incarcerated.

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(f) *Non-Violent Offense* shall mean an offense pursuant to which an offender is confined which did not contain an element requiring proof of Bodily Injury, the threat of Bodily Injury or an Attempt to cause Bodily Injury or Criminal Sexual Conduct.

(g) *Bodily Injury* shall mean physical pain, illness, unconsciousness or any impairment of physical condition.

(h) *Attempt* shall mean to commit a crime when, with intent to engage in conduct which would constitute such crime were the circumstances as he believes them to be, he performs or omits to perform an act which constitutes a substantial step toward commission of the crime.

(i) *Criminal Sexual Conduct* shall mean any offense defined in Chapter 25 of this Title.

(j) *Non-Drug Offense* shall mean an offense which did not include a violation of the Uniform Controlled Substance Act.

(k) *Prison Term* shall mean the term of actual incarceration for First Offenders incarcerated for Non-Violent Offenses. In the case of all other inmates, Prison Term shall mean the term of actual incarceration plus any suspended term of imprisonment. Notwithstanding any other provision of law to the contrary, this definition of Prison Term shall be controlling whenever the term is used to determine eligibility for parole or to determine the date an inmate is Eligible for Parole.

SOURCE: Added by P.L. 24-271:1 (Oct. 2,1998).

§ 80.71. Definition of Board as Territorial Parole Board.

As used in this Article, *board* means the Territorial Parole Board.

§ 80.72. Exception for Parole Eligibility.

(a) Unless otherwise provided by law, every person confined in a Guam penal or correctional institution shall be eligible for release on parole at any time after the service of two-thirds (2/3) of his or her fixed sentence or after a greater time set by the Court, which shall state reasons therefor, provided that in the case of an offender sentenced to a term of imprisonment for the commission of a violent crime, such offender may be released conditionally on parole upon completion of eighty-five percent (85%) of his or her fixed sentence or after a greater time set by the Court, which shall state reasons therefor, or in the case of a person sentenced to life imprisonment, after such person has been confined for twenty-five (25)

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years. Nothing in this Section shall be construed as limiting or mitigating in any fashion the discretionary or mandatory imposition of a sentence of life imprisonment without parole for any offense, as may be detailed elsewhere in this Title or the laws of Guam.

For the purposes of this Section, a violent crime is defined as one or more of the following:

1. aggravated murder, as defined in 9 GCA § 16.30;
2. murder, as defined in 9 GCA § 16.40;
3. manslaughter, as defined in 9 GCA § 16.50, and when such manslaughter is not involuntary;
4. aggravated assault, as defined in 9 GCA § 19.20, and when it is a felony in the first degree;
5. kidnapping, as defined in 9 GCA § 22.20, and when it is a felony in the first degree;
6. first degree criminal sexual conduct, as defined in 9 GCA § 25.15;
7. second degree criminal sexual conduct, as defined in 9 GCA § 25.20;
8. aggravated arson, as defined in 9 GCA § 34.20;
9. first degree robbery, as defined in 9 GCA § 40.10; or
10. second degree robbery, as defined in 9 GCA § 40.20.

(b) The Board shall consider the desirability of parole of each inmate at least sixty (60) days prior to his first eligibility. Following such consideration, the Board shall issue a formal order granting or denying parole. If parole is denied, the Board shall state in its order the reasons therefor and the approximate date of next consideration, which shall not be more than one (1) year from the date of the previous consideration. The Board need not state any reasons for denial if to do so would impair a course of rehabilitative treatment of the inmate.

SOURCE: Enacted 1977; repealed and reenacted by P.L. 14-143, eff. 10/01/78. Subsection (a) amended by P.L. 24-270:2.

COMMENT: Note the addition of new §§ 55015 and 39100.2 to the Government Code by P.L. 14-151, effective 10/17/78. These two sections place restrictions on prisoners' going outside the boundaries of the Guam Penitentiary without the authority

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of the Parole Board. But see Court Decision following § 80.48 invalidating these sections.

§ 80.74. Preparing Prisoner for Parole Hearing.

(a) Each prisoner in advance of his parole hearing shall be requested to prepare a parole plan, setting forth the manner of life he intends to lead if released on parole, including such specific information as to where and with whom he will reside and what occupation or employment he will follow. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of his plan and in securing information for submission to the board.

(b) A prisoner shall be permitted to advise with any persons whose assistance he reasonably desires, including his own legal counsel, in preparing for a hearing before the board.

SOURCE: cf. Govt. Code § 39106; *M.P.C. § 305.7; Mass. ch. 264, § 29.

§ 80.76. Standards Governing Release on Parole.

(a) Whenever the board considers the release of a prisoner for parole, the board shall order his release, if it is of the opinion that:

(1) his release is compatible with public safety and security;

(2) there is substantial likelihood that he will abide by law and conform to the conditions of parole;

(3) his release at that time would not depreciate the seriousness of his crime nor promote disrespect for law;

(4) his release would not have a substantially adverse effect on institutional discipline; and

(5) his continued correctional treatment, medical care or vocational or other training in the institution will not substantially enhance his capacity to lead a law-abiding life when released at a later date.

(b) In making its determination regarding a prisoner's release on parole, the board may consider, to the extent relevant, the following factors:

(1) the prisoner's personality, including his age and maturity, stability, sense of responsibility and any apparent development in his personality which may promote or hinder his conformity to law;

(2) the prisoner's parole plan;

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(3) the prisoner's ability and readiness to assume obligations and undertake responsibilities;

(4) the prisoner's family status and whether he has relatives who display interest in him or whether he has other close and constructive associations in the community;

(5) the prisoner's employment history, his occupational skills and training, and the stability of his past employment;

(6) the type of home environment in which the prisoner plans to live;

(7) the prisoner's past use of narcotics or other harmful drugs, or past habitual and excessive use of alcohol;

(8) the prisoner's mental and physical make-up, including any disability or handicap which may affect his conformity to law;

(9) the prisoner's prior criminal record, including the nature and circumstances, recentness and frequency of previous offense;

(10) the prisoner's attitude toward law and authority;

(11) the prisoner's conduct in the institution, including whether he has taken advantage of the opportunities for self-improvement afforded by the institutional program;

(12) the prisoner's conduct and attitude during any previous experience of probation or parole and the recentness of such experience.

SOURCE: cf. Govt. Code § 39106; *M.P.C. § 305.7; Mass. ch. 264, § 29.

COMMENT: While any competent parole board is sure to take these criteria and factors into account, the Legislature and the public are entitled to the greater assurance that this explicit provision may give. No "good time" provisions are retained. The power of the parole board to release the prisoner provides more than enough incentive to a prisoner to give a good account of himself while in prison. On the other hand, automatic "good time" credit may have the effect of requiring the release of potentially dangerous person before such a release is warranted in the judgment of the Director of Corrections and the parole board.

§ 80.78. Records to Be Made Available to Board.

Before making a determination regarding a prisoner's release on parole, the board shall cause to be brought before it, and it shall be the responsibility of the department of corrections or administrative head of the

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institution in which an offender is held to furnish such of the following records and information regarding the prisoner as may be available:

- (a) a report prepared by the institutional parole staff, relating to his personality, social history and adjustment to authority, and including any recommendations which the institutional staff may make;
- (b) all official reports of his prior criminal record, including reports and records of earlier probation and parole experiences;
- (c) any pre-sentence investigation report of the sentencing court;
- (d) any recommendations regarding his parole made at the time of sentencing by the sentencing judge or the prosecutor;
- (e) the reports of any physical and mental examinations of the prisoner;
- (f) any relevant information which may be submitted by the prisoner, the victim of his crime, or by other persons;
- (g) the prisoner's parole plan;
- (h) the record of his conduct while imprisoned;
- (i) such other relevant information concerning the prisoner as may be reasonably available.

SOURCE: Govt. Code §§ 39101, 39104, 39105; M.P.C. § 305.10; Mass. ch. 264 § 31.

COMMENT: Section 80.78 is comparable to former Government Code §§ 39101, 39104 and 39105, all of which have been repealed to conform with this Code.

§ 80.80. Conditions of Parole.

(a) If a prisoner is released on parole, the board shall require as a condition of his parole that he refrain from engaging in criminal conduct. The board may also require, as a condition of parole, either at the time of his release on parole or at any time and from time to time while he remains under parole, that he:

- (1) support his dependents and meet other family responsibilities;
- (2) devote himself to an approved employment or occupation;
- (3) remain within the geographic limits fixed in his certificate of parole, unless granted written permission to leave such limits;

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(4) report, as directed, upon his release to his parole officer at such regular intervals as may be required, answer all reasonable inquiries by the parole officer, and permit the officer to visit him at reasonable times at his home or elsewhere;

(5) reside at any place fixed in his certificate of parole and notify his parole officer of any change in his address or employment;

(6) reside in a boarding home, hospital, or other parole residence facility, for such period and under such supervision or treatment as the board may deem appropriate;

(7) refrain from possessing firearms or other dangerous weapons;

(8) submit himself to available medical or psychiatric treatment;

(9) refrain from associating with persons known to him to be engaged in criminal activities or, without permission of his parole officer, with persons known to him to have been convicted of a crime;

(10) pay a fine imposed by the court as provided in this Chapter;

(11) satisfy any other conditions reasonably related to his rehabilitation or to the public safety and security.

(b) Before release on parole, a parolee shall be provided with a certificate or parole setting forth the conditions of his parole, and shall sign a statement agreeing to such conditions.

SOURCE: Government Code § 39103; M.P.C. § 305.13; *Mass. ch. 264, § 33; N.J.S. 3:3-123.15.

COMMENT: Section 80.80 simply specifies in greater detail some of the conditions that may be imposed when parole is granted.

§ 80.82. Sanctions for Violation of Parole.

(a) If the parole officer has probable cause to believe that a parolee has violated a condition of parole, he shall notify the board. After consideration of the records submitted, and after such further investigation as it may deem appropriate, the board may order:

(1) that the parolee receive a reprimand and warning from the board;

(2) that parole supervision and reporting be intensified;

(3) that the parolee be required to conform to one or more additional conditions of parole which may be imposed in accordance

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with § 80.80, including but not limited to living in a parole residence facility;

(4) that the parolee be arrested under its warrant authorizing his detention in any jail, lockup, or any other correctional institution, pending a preliminary determination by the board as to whether he should be release or held in accordance with the terms of his original commitment. Such determination shall be made without a hearing within fifteen days of such arrest. If the determination is made that he be held in accordance with the terms of his original commitment, he shall be so held, pending a hearing pursuant to § 80.84 to determine whether his parole should be revoked.

(5) that the parolee be arrested and held forthwith in accordance with the terms of his original commitment to await a hearing pursuant to § 80.84 to determine whether his parole should be revoked.

(b) If a parole officer has probable cause to believe that a parolee has violated or is about to violate a condition of parole and that an emergency situation exists, so that awaiting determination by the board would create an undue risk to the public or to the parolee, the parole officer may arrest the parolee or cause him to be arrested, with or without first issuing a warrant for his detention, and may call on any law enforcement office to assist in the arrest. The parolee shall thereupon be detained on the written order or warrant of the parole office in a local jail, lockup, or other detention facility, pending action by the Board of Parole. Immediately after such arrest and detention, the parole officer concerned shall notify the board and submit a written report of the reason for such arrest. Thereupon the board may order the release of the parolee or take such action as is authorized in Subsection (a) with respect to parolees arrested under its warrant.

SOURCE: GC §§ 39110, 39110; M.P.C. § 305.16; *Mass. ch. 264, § 34; N.J.S. 30:4-123.23.

CROSS-REFERENCES: GC § 39113.

§ 80.84. Revocation Hearing Required: Standards for Revocation of Parole.

(a) If a parolee has been ordered held in accordance with the terms of his original commitment pursuant to § 80.82, the board shall hold a hearing within sixty days of such order to determine whether his parole should be revoked. The parolee shall have reasonable and written notice of the violation charged. The institutional parole staff shall render reasonable aid

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to the parolee in preparation for the hearing and he shall be permitted to advise with his own legal counsel. At the hearing the parolee may admit, deny, or explain the violation charged, and may present evidence, including affidavits, in support of his conventions.

(b) The board may by majority vote of its members order revocation of parole if it is satisfied that:

(1) the parolee has failed, without a satisfactory excuse, to comply with a requirement imposed as a condition of his parole; and

(2) the violation of condition involves:

(A) the commission of another crime;

(B) behavior indicating a substantial risk that the parolee will commit another crime; or

(C) behavior indicating that the parolee is unwilling or unable to comply with the conditions of parole.

(c) The failure by the board to hold a hearing within sixty days, as required by Subsection (a), shall not be a ground for release of the offender, but his right to such a hearing may be enforced by a judge of the superior court by court order after a hearing.

SOURCE: Govt. Code § 39113; M.P.C. § 305.15; *Mass. ch. 264, § 35.

§ 80.86. Prison Term After Revocation: Current Prisoners Provided for.

(a) A parolee whose parole is revoked for violation of the conditions of parole shall be recommitted for the term provided by Subsection (c) of § 80.70 after credit thereon for the period served on parole prior to the violation.

(b) A parole whose parole has been revoked may be considered by the board for re-parole at any time. He shall be considered for re-parole not more than six months after reconfinement.

(c) Persons recommitted for violation of parole prior to the effective date of this Section shall, with their consent, have their maximum term of imprisonment recomputed in accordance with Subsection (a), or set a six months following the operative date of this Section, whichever period shall be longer. All such persons shall be considered by the board for re-parole in accordance with Subsection (b). The remaining period of incarceration eliminated from the person's sentence shall constitute a term of parole.

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SOURCE: Compare Govt. Code §§ 39112, 39118, M.P.C. § 305.17; *N.J.S. 30.4-123.24.

CROSS-REFERENCES: § 80.70 - Parole Term.

COMMENT: There is no provision in § 80.86 for the forfeiture of good time or for special treatment if the parolee commits a new offense. Under this Chapter, responsibility for sentencing the parole violator for the crime constituting the ground for revocation is placed on the hands of the sentencing court. On the other hand, the duration of the re-imprisonment on revocation is fixed under § 80.70.

Subsection (c) makes clear that the benefits of this Section apply to present parole violators who face periods of incarceration which extend beyond those which would be applied under Subsection (d). Thus, Subsection (c) provides that, with the consent of the inmate, the maximum term of his confinement shall be recomputed as provided by this Article, or set at six months following the effective date of this Section. The six-months alternative is intended to allow the parole board time to recompute all affected sentences. Subsection (c) further provides that the period of incarceration eliminated shall constitute a term of parole. This is consistent with the policy of providing all inmates with a period of supervision upon release from the correctional institution.

The consent of the inmate is necessary, otherwise, questions of ex post facto would most certainly arise.

§ 80.88. Discretionary and Mandatory Release from Parole.

(a) The board may, by written order, relieve a prisoner on parole from making further report to his parole officer, and may, in writing, permit such prisoner to leave the territory and reside elsewhere if satisfied that such change of residence is for the best interest of society and the welfare of the prisoner. Any such permission may be revoked by the board in its discretion.

(b) Any person serving a parole term may, in the discretion of the board, be given a complete discharge from parole prior to the expiration of his maximum parole term, provided that he has completed at least one (1) year of satisfactory adjustment while on parole.

(c) A parolee's discharge from parole or from recommitment for violation of parole becomes mandatory upon completion of the maximum parole term.

SOURCE: GC § 39114; *N.J.S. 30:4-123.30.

COMMENT: Subsection (a) is new Subsection while Subsections (b) and (c) are consistent with the former law.

ARTICLE 6
ALTERNATIVE COMMUNITY SERVICE

- § 80.90. Definitions.
- § 80.91. Alternative Service Restitution as Sentence; Restrictions.
- § 80.92. Time for Completion of Work, Alternative Fine or Imprisonment.
- § 80.93. Waiver of Liability.
- § 80.94. Minimum Wage; Restitution for Actual Amount Lost.

§ 80.90. Definitions.

As used in this Article:

(a) *Alternative Community Service* means repayment of the general public for the expenses incurred incidental to the crime. Repayment shall be by donation of time by doing public service work at entities or for persons so as to benefit the general public which includes: charitable agencies, governmental subdivisions, educational institutions, the handicapped, the elderly, the ecology, the church of the offender's choice and any other agencies that the sentencing judge deems reasonably rehabilitative to the offender, however, no work service shall result in gain to any private individual or corporation, other than the defendant.

(b) *Self-Improvement and Rehabilitative Programs* shall include, but are not limited to, educational and vocational school, classes in public or private schools, alcohol education/alcohol treatment, alcoholic anonymous meetings, vocational/health education and rehabilitation, employment counseling or any other self-improvement activities that the sentencing judge deems reasonable rehabilitative and beneficial to the offender.

SOURCE: Added by P.L. 16-51.

§ 80.91. Alternative Service Restitution as Sentence; Restrictions.

In lieu of or in addition to a fine, confinement or probation, a judge in any felony case where force or violence is not an element of the offense of which the dependant stands convicted, or in any misdemeanor, petty misdemeanor, or violation case, including juvenile cases, but excluding every case in which the offense of which the defendant stands convicted carries a mandatory sentence of confinement or involves damage to property of the victim, may impose a sentence that contains any or all of the following elements:

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(a) Restitution as provided for in Chapter 80 of the Criminal and Correctional Code;

(b) Alternative community service; or

(c) Participation in a self-improvement and rehabilitative program.

This provision shall not apply to any case in which the crime of which the defendant stands convicted is punishable by fine only.

SOURCE: Added by P.L. 16-51; amended by P.L. 16-86.

§ 80.92. Time for Completion of Work, Alternative Fine or Imprisonment.

Any sentence imposed under this Article shall contain the time necessary for the completion of the sentence and shall include the penalties of a fine or confinement that will be imposed in the event that such sentence is not completed. In the event that the offender fails to complete a sentence imposed under this Article, the sentencing judge shall give proportional credit for any portion of such sentence completed by deducting part of the fine or confinement, or in all cases where fine and confinement have been stated as a penalty, the percentage shall be deducted from both the fine and the term of confinement.

SOURCE: Added by P.L. 16-51.

§ 80.93. Waiver of Liability.

The territory of Guam and its political subdivisions shall not be liable in any way for any personal injury, civil damages, worker's compensation or unemployment compensation as a result of any injury while the person is doing alternative community service. All work service sentences imposed hereunder shall be deemed public service without monetary compensation and shall not be deemed employment by any of the cooperating agencies, individuals or non-profit corporations that receive the work service.

SOURCE: Added by P.L. 16-51.

§ 80.94. Minimum Wage; Restitution for Actual Amount Lost.

(a) Any credit for community service against the fine imposed shall be given at any hourly rate that equals or exceeds the minimum wage prevailing in the territory of Guam.

(b) Restitution to a crime victim shall be either in monetary payment for damages and should not exceed the actual amount lost, or the offender

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may repay the crime victim by repairing the damages with the consent and agreement of the crime victim; or the offender may repay the crime victim with the consent and agreement of the crime victim.

(c) In the event that there is a dispute between the crime victim and the offender as to the amount of the loss, the judge shall set an amount that adequately and fairly compensates the crime victim, however, the crime victim may pursue his claim in a civil action, or be mutually agreed upon arbitration under the provisions of §§ 2110 through 2120 inclusive of the Civil Procedure Code of Guam, and any decision rendered by such court or arbitrator shall be binding upon the offender, the sentencing judge and the crime victim. The amount of restitution set by the sentencing judge hereunder shall not limit whatever other civil remedies the crime victim may have.

(d) The sentencing judge shall give consideration to any community service that benefits the public and is beneficial to the offender. Any charity, governmental agency or public cause that qualifies for a tax deduction to any donor under United States income tax laws or the tax laws of Guam shall be deemed beneficial to the public. Any person convicted of Driving Under the Influence, as defined by 16 G.C.A. § 18101(a) et seq., shall serve at least one-half (1/2) of that person's community service, working in the litter cleaning program created by 9 G.C.A. § 81.10, unless the Court determines that the defendant is prevented from working in said program by mental or physical infirmity.

SOURCE: Added by P.L. 16-51. Subsection (d) amended by P.L. 25-170:2.
