

9 GCA CRIMES AND CORRECTIONS
CH. 88 CRIMINAL JUSTICE SUBSTANCE ABUSE ACT

CHAPTER 88
CRIMINAL JUSTICE SUBSTANCE ABUSE ACT

SOURCE: Chapter added by P.L. 23-060:1 (Dec. 5, 1995).

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§ 88.10. Short Title.

This Act may be cited as the Criminal Justice System Substance Abuse Act of 1995.

§ 88.11. Legislative Declaration.

The Legislature hereby declares that substance abuse, specifically the abuse of alcohol and controlled substances, is a major problem in the criminal justice system of the Territory of Guam and in the entire Territory. Substance abuse is a significant factor in the commission of crimes and it is a significant factor in impeding the rehabilitation of persons convicted of crimes which results in an increased rate of recidivism. Therefore, the Legislature hereby resolves to curtail the disastrous effects of substance abuse in the criminal justice system and to improve and standardize substance abuse treatment for offenders at each stage of the criminal justice system and to provide punitive measures for offenders who refuse to cooperate with and respond to substance abuse treatment while such offenders are involved with the criminal justice system.

§ 88.20. Substance Abuse Assessment: Standardized Procedure.

(a) The Superior Court of Guam, the Department of Corrections, the Territorial Parole Board, the Guam Police Department, and the Guam

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Behavioral Health and Wellness Center shall cooperate to develop and implement the following:

(1) A standardized procedure for the assessment of the use of controlled substances by offenders, which procedure shall include the administration of a chemical test of such offender for the presence of controlled substances or such other test of the offender for the presence of controlled substances or alcohol as deemed appropriate by the agency which has supervision of the particular offender (hereinafter called the supervising agency). The assessment procedure developed pursuant to this paragraph shall provide an evaluation of the extent of an offender's abuse of substances, if any, and recommend treatment which is appropriate to the needs of the particular offender.

(2) A system of programs for education and treatment of abuse of substances which can be utilized by offenders who are placed on probation, incarcerated with the Department of Corrections, placed on parole, or placed in community corrections. The programs developed pursuant to this paragraph shall be as flexible as possible so that such programs may be utilized by each particular offender to the extent appropriate to that offender. The programs developed pursuant to this paragraph shall be structured in such manner that the programs provide a continuum of education and treatment programs for each offender as he proceeds through the criminal justice system and may include, but shall not be limited to, attendance at self-help groups, group counseling, individual counseling, outpatient treatment, inpatient treatment, day care, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. Any programs developed pursuant to this paragraph shall include a system of periodic or random chemical testing for the presence of controlled substances or alcohol, or such other testing as provided in paragraph (1) of this subsection (a). The frequency of such testing shall be that which is appropriate to the particular offender in accordance with the offender's assessment performed pursuant to paragraph (1) of this subsection (a).

(3) A system of punitive sanctions for offenders who test positive for the use of substances subsequent to the initial test and after being placed in an education or treatment program. The sanctions developed

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pursuant to this paragraph should allow for appropriate responses by the criminal justice system to each occurrence of a positive test by an offender, each of which shall become a permanent part of the offender's record.

(b) The procedures for assessment, treatment, and sanctions required to be developed by subsection (a) of this section shall be implemented only to the extent moneys are available in the Drug Treatment and Enforcement Fund, provided that, in all cases, persons referred or ordered to receive assessment, treatment, or sanctions shall do so at their own expense, unless they are indigent.

(c) The Superior Court of Guam, the Department of Corrections, the Territorial Parole Board, the Guam Police Department, and the Guam Behavioral Health and Wellness Center shall cooperate to develop a schedule of fees sufficient to cover the costs of assessment, testing, and treatment as required by this section. All persons referred or ordered to receive assessment, testing, or treatment shall be made to pay for such, in accordance with the fee schedule, except in such cases where the person is determined to be indigent.

2013 NOTE: Pursuant to P.L. 32-024:2 (May 6, 2013) which renamed the Department of Mental Health and Substance Abuse (DMHSA) to the Guam Behavioral Health and Wellness Center, and all references to DMHSA were altered to to the Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4.

§ 88.30. Substance Abuse Assessment Required for Convicted Felons and Controlled Substance Offenders.

(a) Each person convicted of a felony committed on or after the effective date of this Act who is to be considered for probation, shall be required, as part of the presentence or probation investigation, to submit to an assessment for the use of controlled substances or alcohol developed pursuant to § 88.20(a)(1). The Court shall order such person to comply with the recommendations of such assessment as a condition of probation, at the person's own expense, unless such person is indigent.

(b) Each person convicted of a misdemeanor involving the abuse of any substance, the abuse of which is considered illegal under Guam law, which was committed on or after the effective date of this Act shall be required to submit to an alcohol and drug evaluation. The Court shall order such person to comply with the recommendations of such evaluation, at the person's own expense unless such person is indigent. If such person is sentenced to

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probation, such person shall be ordered to comply with the recommendations as a condition of probation at such person's own expense, unless such person is indigent.

(c) The assessment required by subsection (a) of this section or the evaluation required by subsection (b) of this section shall be at the expense of the person assessed or evaluated, unless such person is indigent.

§ 88.35. Sentencing of Felons: Parole of Felons: Treatment and Testing Based Upon Assessment Required.

(a) Each person sentenced by the court for a felony committed on or after the effective date of this Act shall be required, as part of any sentence to probation, community corrections, or incarceration with the Department of Corrections, to undergo periodic testing and treatment for substance abuse which is appropriate to such person based upon the recommendations of the assessment made pursuant to § 88.30 of this Act, or based upon any subsequent recommendations by the Department of Corrections or the Superior Court of Guam, whichever is appropriate. Any such testing or treatment shall be at such person's own expense, unless such person is indigent.

(b) Each person placed on parole by the Territorial Parole Board on or after the effective date of this act, shall be required, as a condition of such parole, to undergo periodic testing and treatment for substance abuse which is appropriate to such person based upon the recommendations of the assessment made pursuant to § 88.30 of this Act, or any assessment or subsequent reassessment made regarding such person during his incarceration or any period of parole. Any such testing or treatment shall be at such person's own expense, unless such person is indigent.

§ 88.40. Departments Develop Testing Programs: Punitive Sanctions.

(a) The Superior of Guam, the Guam Behavioral Health and Wellness Center, the Department of Corrections, and the Territorial Parole Board, shall cooperate to develop programs for the periodic testing of offenders under the jurisdiction of each agency and programs for the periodic reassessment of appropriate treatment and testing made in the initial substance abuse assessment required by § 88.30 of this Act, or any subsequent reassessment.

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(b) Any offender who tests positive for the use of alcohol or controlled substances subsequent to the initial test required by § 88.30 of this Act shall be subjected to a punitive sanction. The Superior Court of Guam, the Department of Corrections, and the Territorial Parole Board shall cooperate to develop and make public a range of punitive sanctions for those offenders under the jurisdiction of each agency which are appropriate to the offenders supervised by each particular agency. Such punitive sanctions shall be formulated in such a way as to promote fairness and consistency in the treatment of offenders and may include, but shall not be limited to, increases in the level of an offender's supervision, increases in the use of electronic monitoring of an offender, loss of earned time granted pursuant to any appropriate local law or program, and referral of the offender to the court or the Territorial Parole Board for re-sentencing or revocation of probation or parole. It is the intent of the legislature that any offender's test which is positive for the use of controlled substances or alcohol shall result in an intensified level of testing, treatment, supervision, or other sanctions designed to control abuse of substances for such offender.

(c) The Superior Court, the Department of Corrections, the Territorial Parole Board, and the Guam Behavioral Health and Wellness Center shall cooperate to develop a range of incentives for offenders under the jurisdiction of each particular agency to discontinue abuse of alcohol or controlled substances.

(d) No later than six (6) months after the effective date of this Act, the Territorial Parole Board shall develop and make public guidelines for the revocation of parole due to the abuse of alcohol or controlled substances in violation of this act.

2013 NOTE: P.L. 32-024:2 (May 6, 2013) renamed the Department of Mental Health & Substance Abuse to the Guam Behavioral Health and Wellness Center. Reference to the Department of Mental Health & Substance Abuse changed to Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4.

§ 88.50. Samples for Testing of Offenders.

Any type of sample for the chemical testing of any offender for the presence of controlled substances or alcohol pursuant to this Act may be collected from such offender by his probation officer, parole officer, case manager within the Department of Corrections, or any contract provider of testing services.

§ 88.51. Drug Treatment and Enforcement Fund.

There is established a Drug Treatment and Enforcement Fund, which shall be maintained by the Department of Administration separately from the General Fund or any other fund of the government of Guam. All funds collected from fines levied against offenders convicted of any offense involving the illegal possession, illegal possession with the intent to distribute, illegal importation or illegal manufacture of any controlled substance as defined in 9 GCA Chapter [67], shall be deposited in this fund.

2010 NOTE: Reference herein to 9 GCA Chapter “97” appears to be a manifest error by P.L. 23-60 (1995). Chapter 67 is the Guam Uniform Controlled Substance Act. Correction made by Compiler.

§ 88.60. Report to the Legislature.

On or before September 1, 1996, the Superior Court of Guam, the Department of Corrections, the Territorial Parole Board, the Guam Police Department, and the Guam Behavioral Health and Wellness Center shall jointly make a report to a committee meeting of the Guam Legislature's standing committee with appropriate oversight (as designated by the Legislative Committee on Rules) regarding the implementation of this Act; the results of the programs created by this Act, including any reduction in substance abuse by offenders while incarcerated; the standardized procedures developed pursuant to this act; and the number and kinds of punitive sanctions imposed upon offenders pursuant to this Act.

2013 NOTE: P.L. 32-024:2 (May 6, 2013) renamed the Department of Mental Health & Substance Abuse to the Guam Behavioral Health and Wellness Center. Reference to the Department of Mental Health & Substance Abuse changed to Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4.
