



March 25, 2024

Mr. Frank Bordallo, Jr.
Acting Director
Guam Department of Corrections
PO Box 3236
Hagatña, Guam 96932

**Subject: 2015 Hormone or Anti-Androgen Pilot Treatment Program for
Convicted Sex Offenders Draft Rules; P.L. No. 33-67:2**

Hafa Adai Director Bordallo:

The Office of the Attorney General attaches herein the draft "*Hormone or Anti-Androgen Pilot Treatment Program for Convicted Sex Offenders Draft Rules*" that has yet to be adopted and implemented since its passage on September 7, 2015. Under Guam law, the Department of Corrections is required to establish this program. Considering the over 8 years since its passage by our Legislature, and it being the will of our People, we request your expedited review and sending to me any suggested changes. Implementation of the Program is pursuant to the Administrative Adjudication Law (5 GCA § 9303(a)(4)). *Note* 9 GCA § 80.13.

This AG's Office and under my administration, we developed this draft following a survey of various mainland state programs that are similar to Guam's statutory requirements, specifically from Wisconsin and portions of Texas.

My office stands ready to work with your Department in order to further develop and enhance the draft so that we can provide our Governor with a fully developed record for her consideration, as required by 5 GCA § 9303(a)(2). I am confident that our working cooperatively will result in a safer Guam and fulfill the intent of our Legislature. Please contact me directly if it would assist fulfilling your important role in fulfilling Guam law. Thank you.

Cordially,

Douglas B. Moylan
Attorney General of Guam

Attachments (6)
cc: Honorable Therese M. Terlaje, Speaker &
Chairperson, Committee on Health, Land, Justice & Culture

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"Guam's Toughest Law Enforcers"

1. Purpose. The purpose of this chapter is to provide guidelines for requiring pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen, as a condition of probation or parole as a pilot service of the department. This chapter is promulgated pursuant to authority conferred by 9 GCA Ch. 80, Article 7.

2. Definitions. Unless otherwise indicated, in this chapter:

- (a) "Antiandrogen" means a chemical agent that lowers levels of testosterone.
- (b) "Condition" means specific rules, regulations or prohibitions imposed on an offender under the supervision of the department of corrections by the court, parole commission or department.
- (c) "Department" means the Guam Department of Corrections.
- (d) "Division administrator" means the administrator of the department of corrections, division of program planning and movement when the pharmacological treatment hearing is conducted as part of the reclassification process in _____, and the administrator of the department of corrections, division of community corrections when the hearing is not conducted as part of the program review process.
- (e) "Hearing" means the department's administrative proceeding to determine whether the department may impose a condition of supervision requiring compliance with pharmacological treatment.
- (f) "Hearing examiner" means a person appointed to preside over the hearing, to review the evidence presented, including testimony, and to determine, based on the evidence presented, whether the department may impose a condition of supervision requiring the offender to comply with pharmacological treatment.
- (g) "Offender" means an inmate, probationer, or parolee who is committed to the custody of the department for correctional purposes.
- (h) "Pharmacological treatment" means treatment with an antiandrogen or the chemical equivalent of an antiandrogen.
- (i) "Physician" means an individual licensed by the Guam Board of Medical Examiners.
- (j) "Proper medical subject" means a serious sex offender who does not have a diagnosed physical condition that precludes treatment with an antiandrogen.
- (k) "Revocation" means the removal of an offender from probation or parole supervision in accordance with _____.
- (l) "Rules" means those written departmental regulations applicable to a specific offender under supervision.
- (m) "Secretary" means the secretary of the department of corrections.
- (n) "Serious sex offender" means an individual convicted under 9 GCA §§ 25.15, 25.20, or 25.25.
- (o) "Supervision" means the control and monitoring of offenders on probation or parole supervision by a department employee or contract agency employee.
- (p) "Therapeutic level" means the hormone level that, as determined by the treating physician, is the intended effect of pharmacological treatment on an offender.

3. Pharmacological treatment required.

- (a) Pharmacological treatment may not be made a condition of probation or parole supervision without first complying with this chapter.

(b) Serious sex offenders may be required to undergo clinical and medical evaluations to determine the appropriateness of requiring the administration of an antiandrogen or chemical equivalent.

(c) Pharmacological treatment may be made a condition of probation or parole supervision for an offender if all of the following criteria are satisfied:

- (1) The offender is a serious sex offender.
- (2) The offender is a proper medical subject.
- (3) The offender has a diagnosis of pedophilia or any other diagnosis for which the treatment may include an antiandrogen or chemical equivalent.
- (4) The department shall conduct a pharmacological treatment hearing if the department determines that pharmacological treatment should be required and the serious sex offender does not waive the pharmacological treatment hearing and all of the conditions in subsection (c) of this Rule are satisfied.

4. Clinical and medical evaluation.

(a) A licensed physician designated by the department shall conduct the clinical and medical evaluation.

(b) The designated physician shall do the following:

- (1) Obtain a psychiatric history and administer appropriate diagnostic instruments.
- (2) Make a determination as to the presence of pedophilia and any other diagnosis for which the treatment may include pharmacological treatment. This clinical determination shall be in the form of a written report.
- (3) Obtain the medical history, conduct a physical examination and conduct and interpret appropriate laboratory tests to determine whether the offender is a proper medical subject.
- (4) Provide the offender with sufficient information for the offender to understand the risks and benefits of pharmacological treatment, including side effects. The department shall obtain a written acknowledgement from the offender that they have received this information.
- (5) Provide the department with a copy of the offender's medical records on an ongoing basis throughout the course of treatment. Such records shall include documentation and verification of the offender's compliance with pharmacological treatment, including procedures to test for attempts to counteract the treatment program.
- (6) Apply principles and techniques of medical science in determining that an offender is a proper medical subject for pharmacological treatment at regularly established times throughout the course of treatment.
- (7) Monitor the pharmacological treatment on an ongoing basis as follows:
 - i. Obtain appropriate laboratory tests, including testosterone levels.
 - ii. Obtain updated medical history.
 - iii. Conduct physical examinations as needed.

(c) The evaluation shall be sensitive to any cultural, language, ethnic, developmental, sexual orientation, gender, medical and/or education issues.

5. Notice of pharmacological treatment hearing.

- (a) The serious sex offender shall receive written notice of the pharmacological treatment hearing. The notice shall be given at least 72 hours before the hearing.
- (b) The notice shall include all of the following:
 - (1) A statement that a rule requiring compliance with pharmacological treatment has been recommended by the department.
 - (2) The date, time and manner of the hearing.
 - (3) The right of the offender to be present at the hearing.
 - (4) The right of the offender to be represented by an advocate.
 - (5) The right of the offender to be heard and to present evidence and relevant witnesses.
 - (6) The right to cross examine department witnesses.
 - (7) The right to a written decision within 10 working days of the hearing, including the reasons for the decision.
 - (8) The right to appeal the decision to the director of the department within 10 working days of the decision.

6. Pharmacological treatment hearing.

The department shall hold a pharmacological treatment hearing unless waived by the serious sex offender. A hearing examiner shall do all of the following:

- (a) Conduct the pharmacological treatment hearing.
- (b) Keep summary notes of the hearing.
- (c) Decide to permit or disapprove a condition of probation or parole requiring compliance with prescribed pharmacological treatment.
- (d) Issue a written decision, including the reasons for it, within 10 working days of the hearing.

7. Manner of hearing. Appearances may be in person or by electronic means.

8. Hearing procedure.

In the hearing:

- (a) Evidence.
 - (1) The hearing examiner may admit all testimony having relevance including hearsay evidence.
 - (2) The rules of evidence do not apply except that unduly repetitious or irrelevant questions may be excluded.
 - (3) All evidence shall be made part of the record in the case.
 - (4) The hearing examiner may do all of the following:
 - (5) Administer oaths and affirmations.
 - (6) Take an active role in questioning witnesses and eliciting testimony.
 - (7) Regulate the course of the hearing.
 - i. Burden of Proof. [GR1]
 - (1) The[GR2] department has the burden to establish, by a preponderance of the evidence, all of the following:
 - i. That the offender is a serious sex offender.
 - ii. That the offender is a proper medical subject.
 - iii. That the offender has a diagnosis for pedophilia or any other diagnosis for which an antiandrogen may be prescribed.
 - (2) Once[GR3] the department has established all of the criteria in

subsection (b)(1), pharmacological treatment shall be ordered unless the serious sex offender can establish by a preponderance of the evidence all of the following:

- i. Pharmacological treatment of the offender is not necessary for public protection.
- ii. Pharmacological treatment will not further the rehabilitation of the serious sex offender.

9. Qualification of hearing examiner. The hearing examiner may not be currently involved in the offender's treatment, diagnosis, or supervision, or in the direct supervision of the agent or physician treating the offender.

10. Offender advocate. An advocate of the offender's choosing may represent a serious sex offender. The advocate may present witnesses and evidence on behalf of the serious sex offender and cross examine department witnesses. The advocate may not be a person in the custody or under the supervision of the department.

11. Appeal of decision. The serious sex offender or the department may appeal a decision of the hearing examiner to the director of the department of corrections within 10 days of the written decision.

12. Developmentally Delayed Program Participants.

A serious sex offender that has previously been determined to be developmentally delayed:

- (a) Shall be given the opportunity to exercise their right to make voluntary and informed decisions about participating in pharmacological treatment.
- (b) The developmentally delayed serious sex offender shall be informed of the consequences of participation or declining to participate in pharmacological treatment.
- (c) Where a third party serves as parent or legal guardian of a serious sex offender eligible for pharmacological treatment, written consent for treatment shall also be obtained from the parent or legal guardian following an explanation of the consequences of participation or declining to participate in the pharmacological treatment.

13. Review of decision.

- (a) Every 24 months, a hearing examiner shall review the decision ordering mandatory compliance with required pharmacological treatment in accordance with the standards in subsection 8(b)(1) of this Rule.
- (b) A different hearing examiner may perform the review.
- (c) Upon request of the serious sex offender the review shall be in the form of a pharmacological treatment hearing.
- (d) The hearing examiner may continue the order permitting the department to require prescribed pharmacological treatment if evidence since the time of the last review shows that all of the criteria in subsection 8(b)(1) of this Rule have been satisfied.
- (e) When the department has established all of the criteria in subsection 8(b)(1) of this Rule, pharmacological treatment shall be continued unless the offender can establish all of the criteria in subsection 8(b)(2) of this Rule.

14. Waiver. A serious sex offender may sign a form waiving the pharmacological

treatment hearing or review.

15. Detention pending clinical and medical evaluation or pharmacological treatment hearing.

(a) An offender who prior to parole refuses to participate in pharmacological treatment evaluations or the hearing process or refuses to take pharmacological treatment medications may be taken into custody and detained in any correctional institution or jail for the purpose of public protection.

(b) Detention under subparagraph (a) of this Rule may continue until the pharmacological treatment evaluations are completed, the hearing decision is received, and the therapeutic level of the serious sex offender is achieved.

16. Duration of treatment. Pharmacological treatment shall be continued throughout the duration of the serious sex offender's supervision unless one of the following applies:

(a) The serious sex offender is found not to be a proper medical subject.

(b) The pharmacological treatment hearing process described in Rule 8(b)(1) results in a finding that the department may not order pharmacological treatment for the serious sex offender.

(c) The department determines that continuing pharmacological treatment will no longer be beneficial to the community.

17. Rules and conditions established; the serious sex offender's duty to comply; department's response upon serious sex offender's refusal to comply.

(a) The department shall establish special written rules and conditions of supervision for each serious sex offender ordered to comply with pharmacological treatment. These rules shall include procedures to monitor the offender's compliance with the treatment program. The rules and conditions of supervision and any sanctions the department may use in response to noncompliance by the serious sex offender shall be explained to the offender and acknowledged in writing.

(b) Serious sex offenders required to undergo pharmacological treatment shall comply with all rules and conditions ordered by the parole commission or the department.

(c) Serious sex offenders refusing to comply with rules and conditions of pharmacological treatment after a decision by a hearing examiner permitting the department to require pharmacological treatment may be sanctioned or recommended for revocation. A determination that a serious sex offender has obtained or used substances designed to counteract the treatment program is deemed noncompliance with the conditions of treatment.

18. Payment of Program Costs. An offender participating in the program established by this Chapter shall pay to the Department of Corrections the costs of treatment.

19. Program Review. The program described by this Chapter shall terminate forty-eight months after the effective date of this Chapter. Not later than thirty-six months following the effective date of this Chapter the director of the department of corrections shall send to the *I Liheslaturan Guahan* a report setting forth in adequate detail an evaluation of this program. The report shall include an analysis of its effectiveness in mitigating recidivism and enhancing public safety. The report shall also set forth the costs of implementing and managing the program as well as the costs recovered from program participants. The director of the department of corrections shall recommend to *I Liheslaturan Guahan* whether to reauthorize and extend the program.