



**BEFORE THE 2016 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC16-006**

**RELATIVE TO THE NEED TO APPOINT AN EIGHTH JUDGE TO THE SUPERIOR COURT
OF GUAM**

WHEREAS, Title 4 GCA § 4101 provides that the Judicial Council may determine that an additional judge of the Superior Court of Guam is required for the proper dispatch of business of the Superior Court of Guam, and if the Judicial Council so determines, that the Chief Justice if he concurs shall notify *I Maga'lahi* that an additional judge is necessary for the proper dispatch of the business of the Superior Court of Guam; and

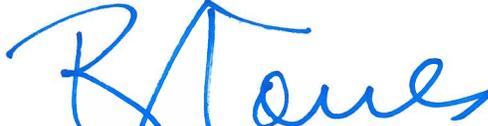
WHEREAS, on January 27, 2016, after discussion by the Judicial Council whether the business of the Superior Court had evolved since 1993 (the last date that a new judgeship was created by law) such as to consider an eighth judge for the Superior Court of Guam, a Committee was appointed by the Chief Justice of Guam, entitled the "Committee for Determination of an Additional Judge," composed largely of private practitioners but including the Clerk of the Superior Court; and

WHEREAS, the Committee polled all sitting Judges of the Superior Court, as well as Magistrates and Hearing Officers, and finally the Guam Bar Association, and the result of the poll was convincingly that the bench and bar both vocalized a strong need for an eighth judge of the Superior Court; and

WHEREAS, representatives of The Committee for Determination of an Additional Judge were present at the April 7, 2016, regular meeting of the Judicial Council and spoke on the record that the bench and bar supported the creation of an eighth judgeship in the Superior Court of Guam;

NOW, THEREFORE, the Judicial Council does hereby determine that there is a need for an additional judge of the Superior of Guam, and requests the Chief Justice to notify *I Maga'lahi* that there is an immediate need for an eighth judgeship at the Superior Court of Guam for the reasons stated on the record at the April 7, 2016 Judicial Council meeting as well as the Report of the Committee for Determination of an Additional Judge, and that filling this vacancy is in the best interest of the Judiciary and the People of Guam.

EFFECTIVE as of the 7th day of April, 2016.



ROBERT J. TORRES, Chairman
Dated: 5-3-16

ATTEST:


JOANNA S. McDONALD, Secretary
Dated: 5-3-16



Hon. Katherine A. Maraman
Justice

Supreme Court of Guam

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May 3, 2016

Chief Justice Robert J. Torres
Supreme Court of Guam
Guam Judicial Center, Ste. 300
120 W. O'Brien Drive
Hagåtña, Guam 96910

**Re: Report of Committee for Determination of Additional
Judge**

Dear Chief Justice Torres,

On behalf of the Committee for Determination of an Additional
Judge, I submit the attached report which has been signed by all
Committee members.

Sincerely,


Katherine A. Maraman
Associate Justice

Enclosures:

Report of Committee for Determination of an Additional Judge

On January 27, 2016, the Judicial Council, at a duly noticed meeting, began discussions regarding whether an eighth judge is needed in the Superior Court of Guam due to the increasing number of cases and the creation of therapeutic courts. These and other factors stemming from 1993 (the last date that a new judgeship was created by law) led the Chief Justice of Guam to appoint a “Committee for Determination of an Additional Judge,” composed largely of private practitioners and including the Clerk of the Superior Court to investigate and issue findings and recommendations concerning the need for an eighth judge in the Superior Court. The Committee was chaired by Justice Katherine A. Maraman and co-chaired by Presiding Judge Alberto C. Lamorena III. Members of the Committee included Attorney General Elizabeth Barrett-Anderson, Clerk of the Superior Court Danielle T. Rosete, President of the Guam Bar Association Jehan’Ad Martinez, Judiciary of Guam Staff Attorney B. Ann Keith, as well as Anita P. Arriola, G. Patrick Civile, and Duncan McCully, who are attorneys in private practice.

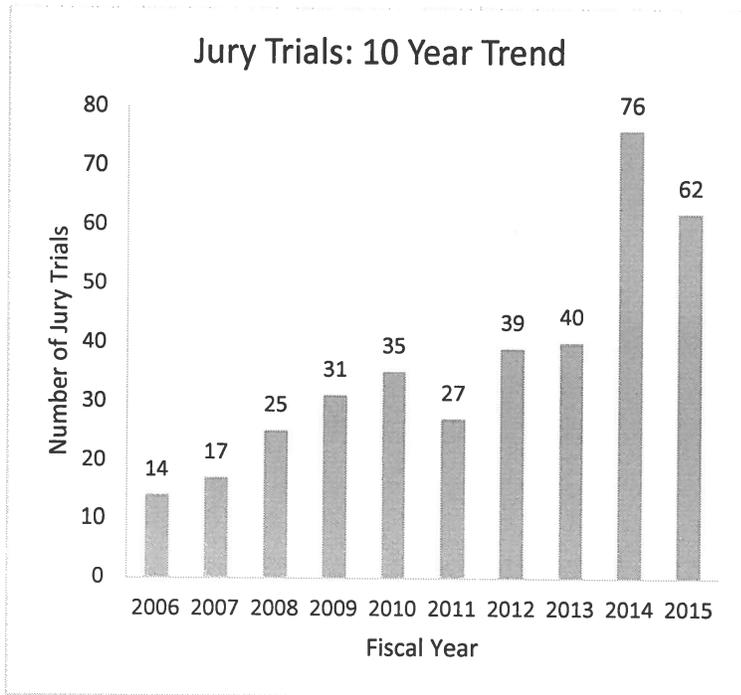
Over the course of several weeks, the Committee interviewed all seven Superior Court judges, other judicial officers and three Guam Supreme Court justices, reviewed studies and reports concerning the efficiency of the lower court, and conducted their own research about the need for an additional judge. Based on all of these investigations, the Committee makes the following recommendations and findings:

I. An additional judge is necessary due to the creation of new therapeutic courts and the increasing number of jury trials.

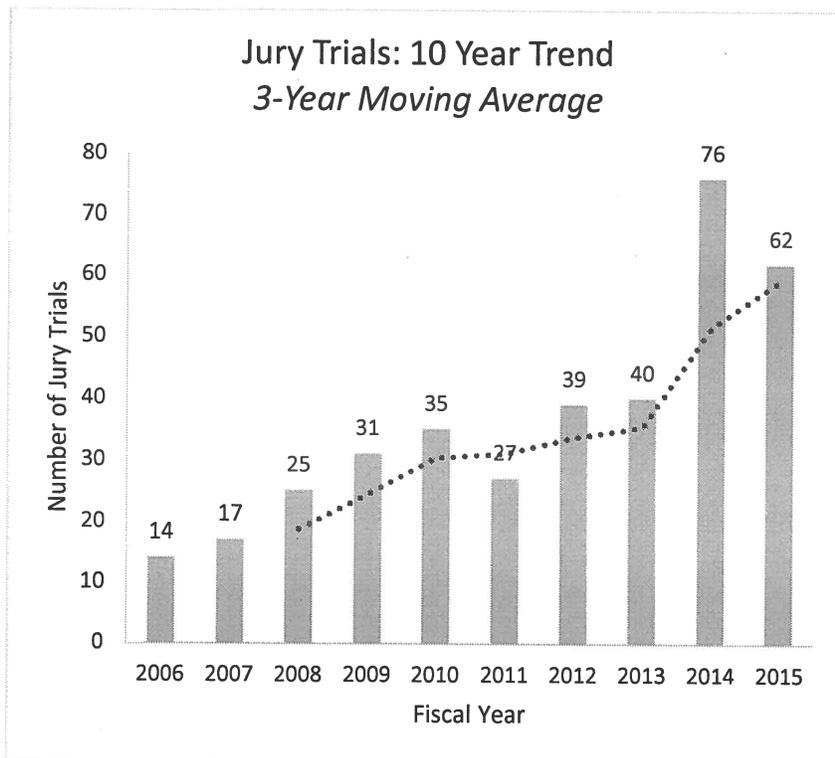
The current seven Superior Court judges are each experiencing an overwhelming caseload due to an increase in criminal jury trials within the last ten years. There has been over four times the number of jury trials in that time period. This is compared with the average of less than two dozen jury trials up to 2005. The increase is driven in large part by new and continuing mandatory minimum sentences for certain crimes.¹ Additionally, and rightfully so, there are at least 30 offenses for which there is now a mandatory minimum sentencing requirement. Many of these offenses had no mandatory minimum previously, and the existence of a mandatory minimum provides a disincentive for criminal defendants to take plea deals since they are more willing to “roll the dice” where there is a mandatory minimum.

The Judiciary has observed nearly a 4.5-fold increase in jury trials since 2006.

¹ An illustrative list of criminal offenses with mandatory sentencing is attached hereto as Exhibit A.



Although the number of jury trials decreased in 2011 and in 2015, the trend of the moving average is increasing. Accordingly, we expect the number of jury trials to increase over the next three years – even if at a slower rate.



In addition, four new therapeutic courts have been created since 1993 in the Superior Court of Guam: Adult Drug Court, Juvenile Drug Court, Mental Health Court and Veterans Treatment Court. These therapeutic courts are assigned to four judges for a three-year rotation. The judges presiding over the therapeutic courts have the least amount of time to attend to traditional criminal and civil cases, yet all seven judges receive a full case load in addition to their therapeutic courts. The Family Violence Court and the DWI Court were also created since 1993 and their cases also require a significant amount of time. Another therapeutic court, the Adult Re-Entry Court, will be launched in October 2016.

Therapeutic courts are successful because they involve the dispensation of praise and encouragement to a struggling defendant instead of punishment. This requires personal interaction between the parties and the judge, which translates into more time spent on the bench. These settings have been proven to produce good results with the parties, and there is no reason to retreat from the model.

The Guam Legislature, the Judiciary, and the community embrace and support the continued need for therapeutic courts of the Superior Court of Guam. All of these courts have proven extremely effective, but they have also increased substantially the time required for therapeutic-court assigned judges and resulted in significant time-consuming dockets. Therapeutic courts are now an integral part of the trial bench on Guam, and there is no indication that this burden will decrease. Indeed, indications are that it will likely increase.

Between the increased number of criminal jury trials and the success of therapeutic courts, the Superior Court judges maintain crushing caseloads, while attempting to dispense fair and equal justice to all who come before them.

II. Increased efficiency in the courts does not diminish the need for an additional judge.

As part of its investigation, the Committee explored whether there were inefficiencies in the Superior Court which, if improved, could lessen the need for an eighth judge. The Committee reviewed a report, "Caseflow, Time Standards, and Efficiency of Personnel Assignments," written by Richard van Duizend of the National Center for State Courts in November 2005 (published on the guamcourts.org website with Supreme Court Administrative Rule 06-001.) That report found, among other things, that the Superior Court had been responsive with Case Flow Management by creating its specialty courts, (Family Violence and the two Family Courts). These specialty courts were the Judiciary's first attempt at differentiated case management.

However, much has changed in the eleven years since that Report. The Report is a snapshot of the 2005 state of case management in the Superior Court of Guam, but did not contain a history of where the Judiciary had been. Rather, the Report endeavored to chart where Superior Court case assignment was to go. In order to address the 2005 trends, the Report concluded that at a minimum, time standards should be adopted for all case types. In line with case processing time goals that have been adopted by the American Bar Association and 38

states, (p. 10, van Duizand, “Caseflow, Time Standards, and Efficiency of Personnel Assignments”), new time standards were adopted in Administrative Rule 06-01. These time standards contemplate completion of criminal cases within a year of their filing. The 2006 time standards have been in effect for ten years, and in those ten years, case numbers have only increased.

In conclusion, a 2005 study was conducted of cases-per-judge that dealt with seven judges at that time, and the Superior Court’s business has significantly expanded since that time.

III. The ratio of judges to cases and the ratio of judges to Guam’s population supports an additional judge.

The Committee also reviewed literature about caseload to judge ratios, case flow management and assignment, and numbers of judges per capita: Maria Dakolias, “Court Performance Around the World: A Comparative Perspective,” Yale Human Rights and Development Journal, Vol. 2 No. 1 Feb. 18, 2014; J. Mark Ramseyer & Eric B. Rasmusen, “Comparative Litigations Rates,” Harvard John M. Olin Center for Law, Economics & Business, ISSN 1936-5357; and Giuliana Palumbo et al, “Judicial Performance and its determinants: a cross-country perspective,” Organization for Economic Cooperation and Development Economic Policy Papers, No. 5, June 2013.

The literature supports an additional judge. The Harvard article referenced above directed the Committee to a formula for judge-to-case assignments. Based on that formula, each judge should not have more than 4,265 cases per judge. Extrapolating the numbers from the Harvard study and applying them to the numbers of judges and cases in the Superior Court, the minimum number appropriate under the Harvard recommendation would be eight judges based on the current number of cases.

IV. Judges and Guam Bar Association members support another judge on the Superior Court.

The Committee met with and interviewed the Superior Court of Guam judges twice to discuss their caseloads, including the difficulties with increased criminal jury trials, and the expanding therapeutic court cases. The opinions from the seven members of the bench of the Superior Court were most illuminating. Six of seven sitting judges strongly supported the need for an additional judge.

The sitting trial judges all related that therapeutic courts take a lot more time, effort, and follow-up than traditional criminal or civil courts. The bench time doubles with therapeutic courts due to their paternal model.

Contributing to the congestion are amended rules of civil and criminal procedure. The days of filing a motion and waiting until motion-calendar days is so long past that the practice is considered archaic. Motions are filed and disposed of with new techniques and forms, and

require more attention from the court and counsel. The new motion rules are designed to streamline motion practice, and in general, they do so. The changes in rules are an important response to the increase in the volume of motions, but despite these changes – which were made in an effort to increase efficiency – there are still delays because of other priorities in calendaring practice.

Another factor contributing to more bench time is the increasing diversity of Guam's population, necessitating more translated hearings and trials than ever. The Judiciary piloted a Court Interpreter Registry Program in 2012. Dozens of court interpreters have been registered and tested in many languages. There are currently 67 registered court interpreters. However, even as the proficiency of court interpreters increases, so too, has the demand. The Judiciary's Court Interpreter Registry Program now recruits for 18 specific languages, many new ones due to emerging tourist markets. The use of an interpreter nearly doubles the bench time for every hearing. In 2015, there were 4,214 court hearings where court interpreters were used.

The Committee observed from talking to the judges that all of the above factors add up to increased bench time. Increased bench time translates to prioritization of the bench-intensive tasks, i.e., criminal matters and therapeutic court cases. Increased bench time means that judges are generally no longer able to devote one day a week as a "Chamber's day," which was often the time when judges could conduct legal research and analysis of civil law motions. Additionally, and rightfully so, Guam law prescribes that a criminal matter takes precedence over a civil matter, regardless of which was first filed.² As a result, civil matters have tended to suffer increasing de-prioritization, and the time that judges have to devote to civil cases has decreased significantly.

The Committee also asked the Attorney General for her input, specifically as it relates to whether she sees any upcoming trends in prosecution. Attorney General Barrett-Anderson responded strongly with a prediction that felony prosecutions will increase sharply. In 2015, the number of criminal felony and juvenile drug court filings increased and were the most filings received in the last 10 years. The Attorney General strongly recommends that the eighth judge be assigned non-criminal matters. Any effort to assign the eighth judge any level of criminal caseload will impose additional personnel mandates upon the Office of the Attorney General Criminal Division that office uses a courtroom-team approach which contemplates that prosecutors and investigators regularly appear in front of the one judge to whom they are assigned.

On March 17, 2016, the Guam Bar Association issued a survey to all active members asking whether there is a need for an eighth judge. Of the responses received, 91% of the responses supported the appointment of an eighth judge. The last time the Legislature agreed to new judgeships was in 1993-4, and there can be no argument that changes in the community, the judiciary, and the legal system since 1994 justify another judgeship.

² 9 G.C.A § 80.50(b).

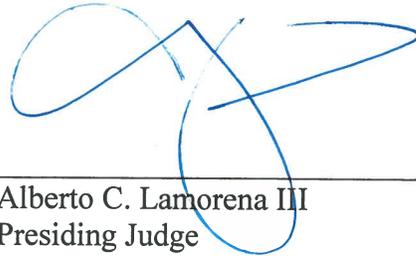
Conclusion:

Based on the Committee's discussions, and feedback from the bench and the bar, the Committee recommends that an additional judge be appointed to the Superior Court of Guam with certain conditions. The Committee strongly recommends that the new judge devote a substantial amount of his or her time to a civil, non-criminal caseload. The Committee's biggest concern is the fact that civil cases are being delayed to the detriment of those litigants and their counsel due to the fact that criminal trials and therapeutic court matters are prioritized over civil cases.

Submitted this _____ day of May, 2016.



Katherine A. Maraman
Associate Justice
Chair



Alberto C. Lamorena III
Presiding Judge
Co-chair



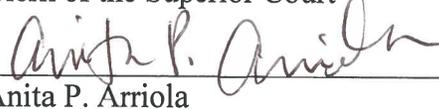
Elizabeth Barrett-Anderson
Attorney General



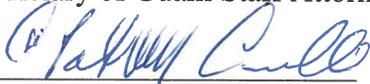
Danielle T. Rosete
Clerk of the Superior Court



B. Ann Keith
Judiciary of Guam Staff Attorney



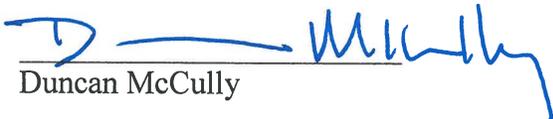
Anita P. Arriola



G. Patrick Civile



Jehan'Ad Martinez
President, Guam Bar Association



Duncan McCully

RECOMMENDATION ON CREATION OF A NEW JUDGE

	IN FAVOR	NOT NEEDED	
ALBERTO C. LAMORENA III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MICHAEL J. BORDALLO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
ANITA A. SUKOLA	<input type="checkbox"/>	<input type="checkbox"/>	
ARTHUR R. BARCINAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
VERNON P. PEREZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
JAMES L. CANTO II	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MARIA T. CENZON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
LINDA L. INGLES	<input type="checkbox"/>	<input type="checkbox"/>	
ALBERTO E. TOLENTINO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

MANDATORY SENTENCING LAWS

9 G.C.A. § 16.40(b) (person convicted of murder shall be sentenced to life imprisonment)

9 G.C.A. § 25.15(b) (mandatory minimum of 15 years imprisonment for conviction of first degree criminal sexual conduct).

9 G.C.A. § 30.31 (mandatory confinement after arrest for family violence)

9 G.C.A. § 34.60(c) (mandatory sentence of not less than 48 hours nor more than one year confinement for persons convicted of criminal mischief)

9 G.C.A. § 43.20 (mandatory minimum of 5 years imprisonment for conviction of second degree felony theft where amount involved exceeds \$1,500).

9 G.C.A. § 43.31 (mandatory minimum of 1 year imprisonment for conviction of crime against the community – e.g., defacing government property or obstructing government services).

9 G.C.A. § 67.401.4(a) (person convicted of manufacturing, delivering or possession with intent to manufacture or deliver a controlled substance shall be sentenced to not less than 10 nor more than 20 years of imprisonment).

9 G.C.A. § 67.401.4(b) (person convicted of manufacturing, delivering or possession with intent to manufacture or deliver a controlled substance and convicted of one or more felonies under the Guam Uniform Controlled Substances Act shall be sentenced to not less than 15 years of imprisonment).

9 G.C.A. § 67.401.4(c) (person convicted of manufacturing, delivering or possession with intent to manufacture or deliver a controlled substance committed while he was released on bail shall be sentenced to not less than 15 years of imprisonment).

9 G.C.A. § 67.401.4(e) (person convicted of an offense involving controlled substance listed in Schedule I or II of the Guam Uniform Controlled Substances Act which is not a narcotic drug or a controlled substance listed in Schedule III of the Act shall be sentenced to not more than 5 years of imprisonment).

9 G.C.A. § 67.401.4(f) (person convicted of an offense involving controlled substance listed in Schedule I or II of the Guam Uniform Controlled Substances Act which is not a narcotic drug or a controlled substance listed in Schedule III of the Act and he has been convicted of one or more specified offenses, he shall be sentenced to not more than 10 years of imprisonment).

9 G.C.A. § 67.401.4(g) (person convicted of an offense involving controlled substance listed in Schedule IV of the Guam Uniform Controlled Substances Act shall be sentenced to not more than 3 years of imprisonment).

9 G.C.A. § 67.401.4(h) (person convicted of an offense involving controlled substance listed in Schedule IV of the Guam Uniform Controlled Substances Act and convicted of another specified offense shall be sentenced to not more than 6 years of imprisonment).

9 G.C.A. § 67.401.4(i) (person convicted of an offense involving controlled substance listed in Schedule V of the Guam Uniform Controlled Substances Act shall be sentenced to not more than 1 year of imprisonment).

9 G.C.A. § 67.401.4(j) (person convicted of an offense involving controlled substance listed in Schedule V of the Guam Uniform Controlled Substances Act and convicted of another specified offense shall be sentenced to not more than 2 years of imprisonment).

9 G.C.A. § 67.401.4(k) (person convicted of an offense of distributing less than one pound of marijuana for no remuneration shall be sentenced as provided in § 67.412) .

9 G.C.A. § 67.401.6 (person convicted of an offense under § 67.403(a) after previously being convicted of 1 or more offenses under that section shall be sentenced to not more than 8 years of imprisonment).

9 G.C.A. § 67.407(a) (person convicted of an offense involving distribution of a Schedule I or II substance to a minor, a person suffering from mental illness, disease or defect, or to a pregnant person, shall be sentenced to serve a term of 5 years of imprisonment).

9 G.C.A. § 67.407(b) (person convicted of an offense involving distribution of a non-narcotic Schedule I or II substance or Schedule III, IV, or V substance to a minor, a person suffering from mental illness, disease or defect, or to a pregnant person, shall be sentenced to serve a term of 3 years of imprisonment).

9 G.C.A. § 67.407(c) (person convicted of an offense involving distribution of a Schedule I, II or III narcotic drug in or on a school, or within the Drug Free School Zone, shall be sentenced to serve a term of 5 years of imprisonment).

9 G.C.A. § 67.407(d) (person convicted of an offense involving distribution of a non-narcotic controlled substance listed in Schedule I or II or a substance listed in Schedules III, IV, or V in or on a school, or within the Drug Free School Zone, shall be sentenced to serve a term of 5 years of imprisonment).

9 G.C.A. § 67.408 (person convicted of an offense of knowingly or intentionally employing, hiring, using of persuading, inducing, enticing or coercing a minor to violate or assist in avoiding detection or apprehension for violation of Guam Uniform Controlled Substances Act shall be sentenced to serve an additional term of 3 years of imprisonment in addition to the minimum sentence under § 67.401.4).

9 G.C.A. § 67.409(b) (person convicted of engaging in a criminal enterprise relative to a controlled substance shall be sentenced to a term of imprisonment of not less than 20 years).

9 G.C.A. § 67.409(b) (person convicted of engaging in a criminal enterprise relative to a controlled substance after one or more prior convictions shall be sentenced to a term of imprisonment of not less than 30 years).

9 G.C.A. § 67.411(a)(1) (person convicted of offense under Article 6 of Guam Uniform Controlled Substances Act and it is the person's second or subsequent offense, shall be sentenced to a term of imprisonment of not less than 20 years).

9 G.C.A. § 67.411(a)(2) (person convicted of offense under Article 6 of Guam Uniform Controlled Substances Act while released on bail shall be sentenced to a term of imprisonment of not less than 20 years).

9 G.C.A. § 71.60(a) (person convicted of discharging, or attempting to discharge, a firearm in a school zone, or bringing or possessing a firearm upon the grounds of a campus, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, for the first offense, shall be sentenced to a term of imprisonment of not less than 3 years).

9 G.C.A. § 71.60(b) (person convicted of discharging, or attempting to discharge, a firearm in a school zone, or bringing or possessing a firearm upon the grounds of a campus, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, after a previous conviction under the § 71.30, § 71.40 or § 71.50, shall be sentenced to a term of imprisonment of not less than 5 years).

9 G.C.A. § 80.30.1 (mandatory sentencing of no less than 3 and no more than 5 years for persons convicted of third-degree felony for possession of methamphetamine).

9 G.C.A. § 80.31.1 (mandatory sentencing of no more than 3 years for first-time offenders convicted of third-degree felony for possession of methamphetamine).